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*Sept. 30, 1905*









**THE LAW OF AFFILIATION AND BASTARDY.**



Gt. Brit. Laws, Statutes, etc. Illegitimacy law

# THE LAW <sup>cf</sup>

## AFFILIATION AND BASTARDY,

COMPRISING THE

**Bastardy Laws Amendment Act, 1872,**

TOGETHER WITH

*OTHER ENACTMENTS RELATING THERETO,*

WITH

**Notes, Forms, and Index.**

BY

**GUY LUSHINGTON, ESQ.,**

*Of the South-Eastern Circuit; Barrister-at-Law.*

o

**Second Edition.**

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# PREFACE

TO THE SECOND EDITION.

A DEMAND having been made for a fresh Edition of this Work, care has been taken not only to bring it up to date by the insertion of all the reported cases bearing on the subject but also of notes dealing with various questions which have arisen in the course of actual practice.

The latest issued report of the Registrar-General of Births, Deaths and Marriages, that for the year 1901, shews that the infants registered in that year as having been born out of wedlock numbered 36,199, being in the proportion of 39 per 1,000 births against an average of 42 per 1,000 births in the ten years 1891—1900. In proportion to population the illegitimate birth-rate was 1·11 per 1,000 against an average of 1·25 per 1,000 in the ten years immediately preceding.

The liability of the parents to maintain their illegitimate children depends entirely upon Statute Law, and the cases decided on the wording of the various sections of those Statutes. As is, unfortunately, so often the case, the law has to be sought in a number

of Statutes, many sections of which have been repealed by later legislation, and further the effect of certain sections of Statutes relating to Poor Law and the subject of Summary Jurisdiction has to be considered.

Under these circumstances, the object has been to produce a Work which will be useful to those who have to deal with such matters in practice. The Statutes have been arranged, not chronologically, but as far as possible in the order in which they deal with the various proceedings in matters of Affiliation. Head-notes and judgments of the cases cited have been fully quoted, as on many occasions in practice the original reports are not accessible. Chapters have been added on certain subjects which demanded more space than could be afforded in a note, and for the main part of one of these, that on Settlement of Illegitimate Children, and with many valuable suggestions in other portions of the Work, I am indebted to my brother, Mr. S. G. LUSHINGTON, of the Inner Temple.

G. L.

TEMPLE,  
*July*, 1904.

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THE LAW  
OF  
AFFILIATION AND BASTARDY.

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THE BASTARDY LAWS AMENDMENT ACT, 1872.  
(35 & 36 VICT. c. 65.)

*An Act to amend the Bastardy Laws.*

[10th August 1872.]

WHEREAS an Act was passed in the seventh and eighth years of the reign of her Majesty, chapter one hundred and one, intituled “An Act for the further amendment of the Laws relating to the Poor in England”:

And whereas it is expedient to amend the said recited Act with respect to proceedings in bastardy:

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Short title.*] This Act may be cited as the “Bastardy Laws Amendment Act, 1872.”

2. *Repeal of enactments as in Schedule.*] *The enactments specified in the First Schedule to this Act are hereby repealed, except as to anything heretofore duly done*

*thereunder, and except so far as may be necessary for the purpose of supporting and continuing any proceeding taken before the passing of this Act.*

**3.** *Putative father to be summoned to petty sessions on application of mother of bastard child.*] Any single woman (*a*) who may be with child or who may be delivered of a bastard child after the passing of this Act may either before the birth (*b*) or at any time within twelve months from the ~~birth of such~~ child (*c*), or at any time thereafter, upon proof that the man alleged to be the father of such child has within the twelve months next after the birth of such child paid money for its maintenance (*d*), or at any time within the twelve months next after the return to England of the man alleged to be the father of such child, upon proof that he ceased to reside in England within the twelve months next after the birth of such child (*e*), make application to any one justice of the peace (*f*) acting for the petty sessional division (*g*) of the county, or for the city, borough, or place in which she may reside (*h*), for a summons (*i*) to be served on the man alleged by her to be the father of the child, and if such application be made before the birth of the child the woman shall make a deposition upon oath stating who is the father of such child (*k*), and such justice of the peace shall thereupon issue his summons to the person alleged to be the father of such child to appear at a petty session to be holden after the expiration of six days at least (*l*) for the petty sessional division, city, borough, or other place in which such justice usually acts (*m*).

(*a*) "ANY SINGLE WOMAN."—There have been no decisions under this Act as to the meaning and extent of these words, but there have been decisions upon similar words in the repealed section of

6 Geo. 2, c. 31, and 7 & 8 Vict. c. 101, s. 2. According to those decisions, this expression will include a widow.

It has been held that a widower who had a daughter settled by marriage was an unmarried person not having child or children within the words of 3 & 4 Will. & My. c. 11, s. 7 (*Anthony v. Cardenham* (1748), Fort. 309 ; 2 Bott. 194).

In stating the result of an examination to show a settlement by hiring and service under 3 & 4 Will. & My. c. 11, s. 7, it must be stated that the pauper had no child or children ; and it was not enough to state that he was single and unmarried, as that might include a widower with children (*R. v. Wymondham* (1843), 2 Q. B. 541 ; 12 L. J. M. C. 74 ; 7 J. P. 306).

And a married woman if the child is really the offspring of an adulterous intercourse.

A child born of adulterous intercourse is as much within the provisions of the Act (6 Geo. 2, c. 31) as one which is born of a single woman (*per ELLENBOROUGH, C.J.*, in *Rex v. Luffe* (1807), 8 East, 193).

The single question is, whether a married woman becoming the mother of an illegitimate child is within 7 & 8 Vict. c. 101, which authorises the justices to make an order of bastardy. The language of the statute applies only to a single woman, so did the language of the statute 6 Geo. 2, c. 31, yet Lord ELLENBOROUGH and the whole court in *Rex v. Luffe* held that an order might be made on the putative father of the bastard child of a married woman, who was to be considered single under the existing circumstances for that purpose. The last-named Act is repealed, indeed, by that now in force, but the authority and reason of the decision remain unimpaired, and the law differently interpreted would fail to reach a large number of illegitimate children (*per Lord DENMAN, C.J.*, in *R. v. Collingwood* (1848), 3 New Sess. Cas. 252 ; 12 Q. B. 681 ; 17 L. J. M. C. 168 ; 12 L. T. 105 ; 12 J. P. 725).

A woman, whose husband had been for several years a convict in Van Dieman's Land, obtained an order in bastardy against a man in her husband's absence. On the return of the husband the putative father ceased to make the payments under the order. The husband deserted his wife after cohabiting with her for about six weeks. The putative father having refused to make any more payments a warrant was issued against him, but the justices refused to issue a

warrant of distress against him on the ground that he was discharged by the return of the husband and his cohabitation with his wife.

A rule *nisi* was obtained, and it was argued, in showing cause against it, that a married woman did not come within the statute, and that the return of the husband to cohabitation freed the putative father from any further liability. Lord CAMPBELL, C.J., in his judgment, said: "I think the decision in *R. v. Collingwood*, *supra*, is quite right, for the reason given in *Rex v. Luffe*, *supra*, that in contemplation of law a married woman living separate from her husband may be within the meaning of the Act which was passed for the purpose of providing for the support of the child (*R. v. Pilkington* (1853), 2 E. & B. 553; 21 L. T. 165; 17 Jur. 554; 17 J. P. 383; reported *sub nom. Ex parte Grimes*, 22 L. J. M. C. 153).

But when a woman has married after the birth and before making her application, no order can be made in her favour, as she is not a single woman within the meaning of the section.

A woman who marries after the birth of her child ought not to be allowed to proceed against the putative father, inasmuch as her husband has become liable to support the child; and it could not have been the intention of the legislature to establish a double liability for its maintenance (*per* MELLOR, J., *Stacey v. Lintell* (1878), 4 Q. B. D. 291; 48 L. J. 108; 27 W. R. 551; 43 J. P. 510).

"It has been settled by decisions that the term 'single woman' is not confined to unmarried women, but may include married women who are reduced to the condition of single women by widowhood or otherwise. The Act 4 & 5 Will. 4, c. 76, s. 57, makes the husband liable to maintain the illegitimate child of his wife born before the marriage, so that as soon as the mother of a bastard child marries there is a person as much bound to maintain it as though it were his own child. The proviso to 7 & 8 Vict. c. 101, s. 5, by which an order for the maintenance of a bastard child is to cease after the marriage of the mother, is purposely omitted from this Act, and upon this omission has been based the argument that it was not meant that the marriage of the mother should disqualify her from applying for an order. But I think the only effect of this omission is to prevent an order duly made from becoming wholly void on the marriage of the mother, and to leave it in the discretion of the justices to allow the order to continue until the child has reached the prescribed age" (*per* LUSH, J., *ibid.*).

A married woman cannot after marriage to another man obtain an order of affiliation against the putative father of her illegitimate child born before marriage, although she is living separate and apart from her husband, he having turned her out of doors and refused to maintain her or the child on first learning of the child's existence (*Peatfield v. Childs* (1899), 63 J. P. 117).

An order cannot be made where the mother has married since the birth of the child and is at the time of the application living with her husband, although she took out a summons against the putative father before her marriage, and was prevented from serving it by his default (*Tozer v. Lake* (1879), 4 C. P. D. 322 ; 41 L. T. 280 ; 43 J. P. 656).

A married woman conceived a child during her husband's absence at sea. On his return, he became aware of her condition but continued to live with her. Being advised by the solicitor who was acting for his wife that it was necessary that she should be living apart from her husband in order that she should obtain an affiliation order, he separated from her and went to reside in another part of the county. The justices found that the separation was not a *bonâ fide* separation but colourable and for the purpose of the proceeding :—*Held*, that the woman was not a single woman within the meaning of the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65, s. 3), and was not entitled to lay an information against the putative father of the child (*Jones v. Davies*, [1900] 1 K. B. 119 ; 83 L. T. 412 ; 49 W. R. 136 ; 65 J. P. 39).

As to the enforcement of an order obtained before marriage by a married woman, see *post*, p. 50.

(b) "MAY EITHER BEFORE THE BIRTH."—As to the deposition on oath to be made by the woman, see *post*, p. 20.

As to the issue of the summons and the time to be fixed for the appearance of the defendant, see s. 4 of 8 & 9 Vict. c. 10, and note, *post*, p. 95.

As to the form of application, see Appendix, *post*, p. 133.

(c) "OR AT ANY TIME WITHIN TWELVE MONTHS FROM THE BIRTH OF SUCH CHILD."—The application for the summons must be made within the time specified, and if, from the putative father's residence being not known, or from his being abroad, the summons be not

granted until after the twelve months, it is still sufficient to give the justices jurisdiction.

A single woman, having been delivered of a bastard child, applied within twelve months of the birth, to a justice for a summons upon the putative father. She (not being on oath) stated to the justice that she had learned that the putative father was in America, upon which the justice, without directly refusing the application, declined to issue the summons then. More than twelve months from the application she discovered that the putative father was in England, upon which she obtained and served a summons from the same justice; and the justices upon this application made an order of maintenance upon him. The summons professed to be on a renewed application:—*Held*, that the order was good under 7 & 8 Vict. c. 101, s. 2, and 8 & 9 Vict. c. 10, sched. 4, the whole proceeding being in effect founded on the original application, and it not being necessary that the summons should issue at the time when the application was made (*Potts v. Cumbridge* (1858), 8 El. & Bl. 847; 27 L. J. 62; 4 Jur. (N.S.) 72).

The mother of a bastard child, born on March 20th, 1868, laid an information before a justice on April 18th, 1868, against the defendant, the putative father, under 7 & 8 Vict. c. 101, s. 2. A summons was issued on the same day but never served, as the defendant could not be found by the process server to whom the summons was given. On January 14th, 1870, about a fortnight after the mother had found out the defendant's address, she applied for and obtained another summons, which was served on the defendant, and he appeared thereto, and being examined on oath, committed the perjury assigned:—*Held*, the justices had jurisdiction to hear the complaint although at the time of service of the summons more than twelve months had elapsed from the birth of the child (*R. v. Chugg* (1870), 11 Cox C. C. 538; 22 L. T. 556; 34 J. P. 469).

But if the justice who issued the summons die within twelve months from the birth of the child another justice cannot receive another application or grant a fresh summons after the expiration of twelve months.

The mother of a bastard child applied to a justice, within twelve months after the child's birth, for a summons against P., the alleged father. The summons was issued by the justice, but could not be served, P. having absented himself. On P.'s return, which was more

than twelve months after the child's birth, and before which time the justice who had issued the first summons had died, the mother obtained from another justice a second summons against P., and upon its coming on for hearing, the justices in petty sessions made an order adjudging P. to be the putative father, and ordering him to pay a certain sum by way of maintenance:—*Held*, that the order was bad, inasmuch as by 7 & 8 Vict. c. 101, s. 2, the jurisdiction to make the order is limited to the justice before whom the first application is made, and that the second summons, not being issued by the same justices, could not be considered as part of the original process upon the first application (*R. v. Pickford* (1861), 1 B. & S. 77; 30 L. J. M. C. 133; 4 L. T. 210; 9 W. R. 634; 7 Jur. (N.S.) 568).

It is advisable not to make the application to an *ex officio* justice of the peace, as should the putative father abscond or leave the country and not return till after such justice of the peace has ceased to hold office, the mother would be left without a remedy. See 62 J. P. 317.

A bastard child having been born on November 3rd, 1877, application for an affiliation order was made by the mother on October 11th, 1878, and the summons was heard and dismissed for want of corroborative evidence on October 25th, 1878. On the same October 25th, after the justices had left the court-house, the mother applied to the justices' clerk at his office for a second summons, alleging that further corroborative evidence was forthcoming. The clerk advised her to see and consult her solicitor, as to the further evidence, before she took out a second summons, and four days afterwards, she, with her solicitor, saw the clerk, and requested that a second summons might be issued upon the original application of October 11th, but in consequence of the justice to whom such original application was made not attending the court, a second summons was not issued till November 6th, 1878, when a summons purporting to be granted upon the original application of October 11th was issued by such justice, and was heard by adjournment on November 21st, 1878, when an order was made by the justices upon the appellant:—*Held*, by the Exchequer Division, that the order was bad, and must be quashed upon the grounds: (1) That the original application of October 11th was spent and exhausted by the hearing and dismissal of the case on October 25th, and that the second application for a summons could not be treated

as a continuance of the original one ; (2) That as 35 & 36 Vict. c. 65, s. 3, requires the application for an order to be made within twelve months of the birth to the justice himself, the application to the justices' clerk is not sufficient, and that the respondent's second application not having been made to the justice himself until November 6th, 1878, it was too late, and the justice had no jurisdiction in the matter (*Staples v. Staples* (1879), 41 L. T. 347).

A bastard child having been born in September, 1896, the mother on October 21st, 1896, made three separate applications to three separate justices for a bastardy summons against the defendant, but as she was at that time unable to find him, the issue of the summons was suspended. In July, 1897, the mother, having found the defendant, procured one of the three justices to issue his summons upon the application so made to him on October 21st, 1896. On November 3rd, 1897, that summons was heard and dismissed on the ground that the evidence was insufficient. On November 17th, 1897, she procured another of the three justices to issue a further summons against the defendant, which summons purported to be founded on the application to the said justice of October 21st, 1896. The summons was heard and a bastardy order made:—*Held*, that the three applications made on October 21st, 1896, were in substance but one application, and were exhausted by the hearing and dismissal of the summons on November 3rd, 1897, and that consequently the order was made without jurisdiction (*R. v. Robinson*, [1898] 1 Q. B. 734 ; 67 L. J. Q. B. 510 ; 78 L. T. 350 ; 62 J. P. 309 ; 46 W. R. 462 ; see also Art., 62 J. P. 259).

As to the form of application, see Appendix, *post*, p. 135.

(d) "OR AT ANY TIME THEREAFTER, UPON PROOF THAT THE MAN ALLEGED TO BE THE FATHER OF SUCH CHILD HAS WITHIN THE TWELVE MONTHS NEXT AFTER THE BIRTH OF SUCH CHILD PAID MONEY FOR ITS MAINTENANCE."—Evidence of this fact must be deposed to in writing on oath to the justice on the application for the summons. The mother or any witness who can swear to the facts can give such evidence. Such evidence need not be corroborated either at the application for or at the hearing of the summons.

This deposition on oath is, however, only a matter of process, and the appearance of the defendant to the summons without raising any objection, will waive such irregularity.

The mother of a bastard child, more than twelve months old, applied to a justice for a summons against the prisoner, the putative father, alleging, but not proving on oath, that he had paid money for the maintenance of the child within twelve months from the birth. The summons was issued in the form given by the schedule to the statute 8 & 9 Vict. c. 10, except that it stated the woman alleged that the man had paid money within the twelve months, instead of saying that she had given proof of the fact. The prisoner appeared, and took no objection to the summons or the proceedings on which it was founded, but denied the paternity, and falsely swore he had not paid any money as alleged. The prisoner was on this indicted for perjury, and convicted. On the trial, it was objected that the magistrates had no jurisdiction as proof on oath that the money had been paid as alleged was necessary, under the statutes 7 & 8 Vict. c. 101, s. 2, and 8 & 9 Vict. c. 10, to give the justices authority to issue the summons, and that it was immaterial at the hearing whether the money had been paid, as proof of that fact was only necessary prior to the issuing of the summons :—*Held*, that had the objection of the want of proof on oath of payment of the money and of the variation of the summons from the form given by the statute been taken before the magistrates, it probably ought to have prevailed, but that this was a mere irregularity in process to bring a defendant into court in a proceeding in the nature of a civil suit, and that the prisoner waived it by not taking an objection at the hearing, and by then going into the merits of the case (*R. v. Berry* (1859), 8 Cox C. C. 121 ; 1 Bell C. C. 46 ; 25 L. J. M. C. 86 ; 32 L. T. (o.s.) 324 ; 5 Jur. 320 ; 7 W. R. 229).

A summons after the birth of a bastard child under 7 & 8 Vict. c. 101, s. 2, against the putative father, which issued on the application of the mother, and alleged that proof had been given of payment of money by the father, within the twelve months next after the birth of the child, for its maintenance, the father appeared to answer the summons at the petty sessions, and made no objection to the jurisdiction of the justices or otherwise, but was sworn on his own behalf, and gave evidence, in respect of which he was afterwards indicted for perjury. On the trial of the indictment for perjury, the jury found the defendant guilty, and found also that the defendant had not within the twelve months next after the birth of the child paid any money for its maintenance :—*Held*, on the authority of *R. v. Berry*, *supra*, that the justices had jurisdiction to hear the

summons, and that the defendant had waived the objection, the summons to the putative father to appear at petty sessions being a matter of process only, and not of substance essential to the jurisdiction of the petty sessions (*R. v. Simmonds* (1859), 8 C. C. 190; 28 L. J. M. C. 183).

H., a police constable, procured a warrant to be illegally issued without a written information or oath, for the arrest of S. upon a charge of assaulting and obstructing him, H., in the discharge of his duty. Upon such warrant, S. was arrested and brought before justices, and was without objection tried by them and convicted. H. was afterwards indicted for perjury committed on the said trial of S., and convicted:—*Held*, that H. was rightly convicted, notwithstanding there was neither in the information nor oath anything to justify the issue of the warrant, and that the justices had jurisdiction to hear the charge, though the warrant upon which the accused was brought before them was illegal (*R. v. Hughes* (1879), 4 Q. B. D. 614; 48 L. J. M. C. 151; 40 L. T. 685; 43 J. P. 556).

The mother of a bastard child applied to T., a justice of the petty sessional division, who issued a summons against B., the putative father. At the petty sessions the service was not proved, and her solicitor issued a fresh summons issued by F., another justice, and this was duly served. At the hearing, B. appeared through his solicitor, who took no objection to the process, and cross-examined the witnesses and addressed the justices, who made an order on B. to pay a weekly sum from the date of the first summons. The order being objected to, the mother abandoned that part of the order as to the weekly sums preceding the hearing, and another was drawn up correcting the mistake:—*Held*, the order was made with jurisdiction, the appearance of B. at the hearing waiving all irregularities of process, and the alleged invalid part of the order being abandoned (*R. v. Fletcher* (1884), 48 J. P. 407; 32 W. R. 859).

For the purpose of making an order on the putative father of a bastard child, after the expiration of a year from its birth, under 7 & 8 Vict. c. 101, ss. 2 and 3, it is not necessary that the evidence of the mother of payment of money by the alleged father should be corroborated by other testimony, either on the application for or on the hearing of the summons (*Hodges v. Bennett* (1860), 5 H. & N. 625; 29 L. J. M. C. 224; 2 L. T. 190; 8 W. R. 463).

An order obtained by guardians under 36 Vict. c. 9, s. 5, and payment of money under it, will not give the justices jurisdiction to make an order under this section upon application of the mother more than twelve months after the birth.

Payment by a putative father of a bastard child of money in pursuance of an order obtained under 36 Vict. c. 9, s. 5, by the guardians or parish of the union in which the mother becomes chargeable, is not such a payment under 35 & 36 Vict. c. 65, s. 3, as entitles the mother to make an application on her own behalf for an order against the father more than twelve months after the birth of the child (*Billington v. Cyples* (1885), 52 L. T. 854; 49 J. P. 582).

As to the form of application, see Appendix, *post*.

(c) "OR AT ANY TIME WITHIN THE TWELVE MONTHS NEXT AFTER THE RETURN TO ENGLAND OF THE MAN ALLEGED TO BE THE FATHER OF SUCH CHILD, UPON PROOF THAT HE CEASED TO RESIDE IN ENGLAND WITHIN THE TWELVE MONTHS NEXT AFTER THE BIRTH OF SUCH CHILD."—It was formerly thought that if the father left England before the birth of the child, that he did not in that case cease to reside in England within twelve months next after the birth of the child, and that this was a *casus omissus* in the Act.

No decision had been given on this point till very recently, when the following case arose in which circumstances gave rise to this point, and it was decided that a man who left before the birth, and the woman did not take out a summons till after his return, had in fact ceased to reside after the birth in England.

A single woman gave birth to an illegitimate child on January 30th, 1894, of which she alleged a second mate on foreign-going vessels was the father. On March 1st, 1894, she laid an information before justices, and a summons was issued against the putative father, who had left the country on December 29th, 1893, one month before the birth of the child. In consequence of his absence abroad, due and proper service of the summons could not be effected, but in March, 1895, the summons was served at Falmouth, returnable on April 1st, 1895. There was an adjournment, and on May 6th the summons was heard and dismissed for want of corroborative evidence. Further evidence having been obtained by the complainant, she applied for and obtained a second summons on May 7th, 1895,

returnable on May 20th, 1895. On the hearing of the summons it was objected by the defendant, that the justices had no jurisdiction to hear the application on the ground that the same was not made within twelve months of the birth of the child, and the defendant had not ceased to reside within twelve months next after the birth of such child. The justices allowed the objection :—*Held*, on appeal, that the justices were wrong, as the father, though he had left England before the birth of the child, had ceased to reside within twelve months next after the birth of the child.

“A man ceases to reside all the time he is absent. It is like desertion—a continuing state of facts” (*per* HAWKINS, J., in *R. v. Evans*, [1896] 1 Q. B. 288 ; 60 J. P. 39).

As to the form of application, see Appendix, *post*, p. 138.

(f) “MAKE APPLICATION TO ANY ONE JUSTICE OF THE PEACE.”—The rule as to applications for summons, as gathered from the cases decided on the subject, which will be found collected below, may be stated thus :

If the original application is made within the time limited by the Act and the summons granted thereon is dismissed upon a technical objection, a second summons or a series of summonses, if necessary, may be issued upon the original information, even though the time limited for a new application is passed.

Where the dismissal is upon the merits or for want of corroborative evidence, that is not a final decision, but rather in the nature of a non-suit, and a second or further summons can be granted on a fresh information to the woman within the time prescribed by the Act.

The justices on such application may take into consideration their previous dismissal, but they are not bound to treat it as conclusive.

Where an order has been tried on the merits and quashed on appeal to quarter sessions, that is a final decision and no further summons can be granted, but this rule does not apply if the order has been quashed by the quarter sessions on a technical ground, such as a matter of form in the order, or from the mother and her witnesses being accidentally absent from the hearing.

Where a woman, on June 19th, 1847, applied at a petty session in the county of W. while resident therein, for an order on the putative father of her child, which was born on March 22nd, 1847, and the

application was dismissed for a defect in the evidence, and on February 19th, 1848, having removed to the county of B., made another application against the same person to a petty sessions there, and the justices made an order on the putative father who appealed to the quarter sessions, by whom the order was confirmed :—*Held*, a dismissal of the first application upon the merits would have been an answer to the second, provided it was made out by evidence (*R. v. Buckinghamshire JJ.* (1846), 3 New Sess. Cas. 500 ; 15 L. J. M. C. 113). This case is virtually overruled by *R. v. Machen* and *R. v. Hall*, *post*.

Under the statute 7 & 8 Vict. c. 101, s. 2, a refusal by justices to make an order for maintenance of a bastard, though on the merits, is no bar to a second application. And if justices refuse to entertain such second application on the mere ground of the first refusal, the court will order them by *mandamus* to hear. The justices, on a second hearing, may, nevertheless, take into consideration, with a view to forming their decision, the fact and circumstances of the former hearing (*R. v. Machen* (1849), 14 Q. B. 74 ; 3 New Sess. Cas. 629 ; 18 L. J. M. C. 213).

“ We are far from saying the dismissal is to have no weight, but we think the justices cannot refuse to hear a second application. If it should appear to them the matter was fully inquired into on the first occasion, they will reasonably view any new evidence with suspicion and sift it accordingly ; but we do not think the dismissal can operate as a bar to further inquiry ” (*per* DENMAN, C.J., *ibid.*).

A second application may be made for an order of affiliation, although the first was dismissed on the merits after a full examination. The case of *R. v. Machen*, *supra*, refers to such an application, though the dismissal of the first application was not merely on the ground of insufficiency of evidence and in the nature of a non-suit, but after a full hearing on both sides and notwithstanding a second application is in the nature of a new trial (*Ex parte Westerman* (1851), 16 L. T. (o.s.) 420).

If after the return of a summons it cannot be heard owing to the defendant not having been properly served, or non-attendance of justices, a second or series of summonses, if necessary, may be issued on the original information.

The mother of a bastard child duly applied for a summons against F. and obtained it, but it was not served owing to the absence of F. A second summons was issued some months afterwards but within

the twelve months after the birth, by the same justice reciting the first information, and an order was made which stated the application as of the date of the summons :—*Held*, the order was regular, for, when an information is once laid in due time, several summonses may issue without a fresh information being laid for each successive summons, and, therefore, *certiorari* refused (*Ex parte Fielding* (1861), 25 J. P. 759).

On March 26th, 1860, a woman applied for a summons against a man in respect of a bastard child born on November 15th, 1859. The summons was heard on April 30th following, and was dismissed on account of the want of sufficient corroborative evidence. Subsequently, in December, 1862, another summons was issued, and upon the hearing, on the 29th of that month, an order was made. The order itself purported to be founded upon the application made on March, 26th, 1860 :—*Held*, that the order was bad, for that the application of March 26th was spent by the hearing and judgment on April 30th, and that being so, there was no application to support the order within twelve months of the birth of the child (*R. v. Thomas* (1863), 8 L. T. (N.S.) 461 ; 27 J. P. 694).

An order of affiliation void for defects appearing upon the face of it is altogether a nullity and may be treated just as if the justices who made the order had never heard the case at all; and it is not necessary to proceed either by way of appeal or writ of *certiorari* in order to quash it. Where, therefore, such a defective order had been made, and served but not acted upon, and upon a second application in the same matter, two justices made another valid order of affiliation :—*Held*, the justices had jurisdiction to make the second order, although the first had not been got rid of upon appeal or by writ of *certiorari*, and that an indictment for disobedience of it was warrantable (*R. v. Brisby* (1849), 3 New Sess. Cas. 591 ; 18 L. J. M. C. 157 ; 2 C. & R. 965 ; 13 Jur. 520).

The mother of a bastard child applied within twelve months after the child's birth for an affiliation summons against H., and the justices, on the hearing, dismissed the information for want of corroborative evidence. She afterwards within twelve months, renewed the application for a summons to other justices of the same division, who made the order, though it was objected that the case had been previously heard and decided :—*Held*, that the order was valid : that it is for the justices to decide whether a previous application

had been decided on its merits, and if so, to dismiss the second case (*R. v. Herrington* (1864), 3 W. R. 468 ; 12 W. R. 420 ; *sub nom. R. v. Harrington*, 28 J. P. 485).

A bastardy summons under 7 & 8 Vict. c. 101, s. 2, having been heard and dismissed on its merits, one of the chief witnesses for the defendant was afterwards convicted of perjury on the evidence he had given. A fresh application was then made, and on the hearing of the summons it was objected for the defendant that the justices had no jurisdiction, by reason of the previous dismissal on the merits. The justices determined to hear the application, saying the previous dismissal was obtained by false evidence, and having heard the applicant and corroborative evidence made an order of affiliation :—*Held*, the justices had jurisdiction and the order was valid (*R. v. Gaunt* (1867), L. R. 2 Q. B. 466 ; 36 L. J. M. C. 89 ; 16 L. T. 379 ; 15 W. R. 1172 ; 8 B. & S. 365).

“ I only wish to be understood as saying that when the dismissal is upon the merits, the justices, on any subsequent application, ought to defer so much to the former decision as to treat the matter as *res judicata*, unless it be shown that, what may be called the first trial, was, for some reason or other, not fair ” (*per* BLACKBURN, J., *ibid.*).

The mother of a bastard child, whose application at petty sessions for a summons against the putative father is dismissed, may, within twelve months of the birth of the child, renew such application any number of times, and a dismissal on the merits of an application is no bar to the jurisdiction of the justice to entertain a fresh application (*R. v. Hall and Another and Gillespie* (1887), 57 L. T. 306).

If the justices unnecessarily dismiss a summons on a technical objection which they might have amended, it does not amount to a hearing and determination, and a fresh summons may issue though the time limited for a new application has passed.

A woman duly applied to a justice for a summons against a putative father, but the information and summons stated that the birth of the child, though itself properly stated, was after the passing of the Bastardy Act, 1872, whereas it should have been stated as before that Act. On the hearing, objection was taken by the defendant that the child was born before the passing of the Act. The mother was sworn and admitted this was so, and the justices, instead of amending, dismissed the summons. Upon another

~~summons~~, reciting the same application, but without the mistake therein, the justices made an order against the defendant:—*Held*, upon certiorari, that the dismissal of the first summons was not such a ~~dismissal~~ as to exhaust the application and a fresh summons might ~~be made~~ through the time limited for a new application had passed (*R. v. Lancashire JJ.* (1874), 28 L. T. 886; 38 J. P. 215; 22 W. R. 322). See also *R. v. Robinson*, ante, p. 8.

From the hearing of an appeal to quarter sessions against an order of affiliation, it appeared the respondent and her witnesses were not present, having mistaken the day of hearing, and her counsel applied for an adjournment till the following morning, offering to pay the costs of the day. The appellant having declined to accede to this proposal, the sessions directed the case to proceed and quashed the order, no evidence having been adduced on the part of the respondent. *Held*, that the order of quarter sessions was not a decision upon the merits and that fresh proceedings in respect of the same might be taken before justices (*R. v. May* (1880), 5 Q. B. D. 302, 46 L. J. 67; 28 W. R. 918; *sub nom.* *R. v. Phillips*, 42 L. T. 772; *sub nom.* *R. v. Hare JJ.*, 44 J. P. 538).

But where on appeal to quarter sessions an order of affiliation is quashed on the ground of the insufficiency of the corroborative evidence, the order of quarter sessions is a decision on the merits and is final, and fresh proceedings cannot be taken before justices (*H. v. Hynde* (1871), L. R. 7 Q. B. 16; 41 L. J. M. C. 58; 26 L. T. 61; *sub nom.* *H. v. Flintshire JJ.*, 20 W. R. 94).

An order of quarter sessions quashing a bastardy order on the ground that the appellant is not the father of the child is no bar to an action for seduction by the employer of the woman who had obtained the bastardy order (*Anderson v. Collinson*, [1901] 2 K. B. 107; 70 L. J. K. B. 620; 84 L. T. 465; 49 W. R. 623).

The mother is not precluded from applying by the fact that the guardians have previously applied and been unsuccessful.

Where the mother of a bastard child made an application within twelve months after the birth of the child to petty sessions for an order on the putative father, and the justices refused to hear the application on the ground that proceedings having been taken by the guardians of the poor against the putative father, and the quarter sessions to which that inquiry had been moved by the putative father, had refused to make an order, a *mandamus* was

granted to compel the justices to hear the application (*R. v. Walker* (1845), 14 L. J. M. C. 120).

Objection to any irregularity in the issue of the summons should be taken at the hearing, or else it will be deemed that all irregularities have been waived if the defendant appears or is represented and no objection is taken.

The mother of a bastard child applied to T., a justice of the petty sessional division, who issued a summons against B., the putative father. At the petty sessions service was not proved, and her solicitor obtained a fresh summons issued by F., another justice, and that was duly served. At the hearing B. appeared through his solicitor, who took no objection to the process, and cross-examined the witnesses. The justices made an order on B. to pay a weekly sum from the date of the first summons. The order being objected to, the mother abandoned that part of the order as to the weekly sums preceding the hearing and another was drawn up correcting the mistake :—*Held*, the order was made within jurisdiction, the appearance of B. at the hearing waiving all irregularities of process, and the alleged invalid part of the order being abandoned (*R. v. Fletcher* (1884), 48 J. P. 407 ; 32 W. R. 829).

As to the forms of application, see Appendix, *post*, pp. 133 *et seq.*

Justices are not bound to entertain a second application until the costs of the first have been paid or tendered and the defendant has thereby been replaced in his original position, but this course is only necessary where the first hearing is admitted to be altogether abortive, and that, therefore, the proceedings have to be commenced again.

A woman applied at petty sessions for an order of affiliation. The case was adjourned and an order made at the adjourned petty sessions on the putative father, who appealed to quarter sessions. Before those sessions were held, the attorney for the mother gave notice of abandoning his order and tendered to the appellant's attorney thirty shillings for costs, which he accepted supposing the sum to be offered in discharge only of the costs of the adjournment, the sum being, in fact, much below the whole amount of costs. The residue being unpaid, the mother's attorney requested the justices in petty sessions to re-hear the case for the purpose of making another order on their refusal and motion for *mandamus*. Writ refused, because

the abandonment had not been completed by replacing the appellant in his original situation and, therefore, the order was still in force (*R. v. Hinchcliff* (1847), 10 Q. B. 356). See also the judgment of QUAIN, J., explaining this decision in *R. v. Lanyon* (1878), 27 L. T. 355).

As to application before the birth, see *post*, p. 95.

(g) "PETTY SESSIONAL DIVISION."—For the definition of a petty sessional division, see 8 & 9 Vict. c. 10, s. 10, *post*, p. 100.

(h) "PLACE IN WHICH SHE MAY RESIDE."—A person who has no permanent place of abode "dwells" at the place at which he may be temporarily residing (*Alexander v. Jones* (1866), L. R. 1 Ex. 133 ; 13 L. T. 769).

A woman who has no settled place of residence may make application to the justices of the division in which for the time being she happens to be (*Lawrence v. Ingmire* (1869), 20 L. T. 391 ; 33 J. P. 309).

It is no objection to the jurisdiction of a county court under 19 & 20 Vict. c. 108, s. 18, that the plaintiff has become resident within the district of the court for the very purpose of giving it jurisdiction, provided that the residence was actually *bonâ fide* and not colourably and collusively acquired before the issue of the summons (*Massey v. Burton* (1857), 27 L. J. Ex. 101).

If a woman goes to lodge at a place for the purpose of applying to the magistrates there for an order of affiliation, intending to leave the place as soon as she has got the order, she having at the time no other residence and not having gone there for any fraudulent or improper purposes, she is resident in the place within the meaning of 7 & 8 Vict. c. 101, which by s. 2 requires that application for such order must be made to justices acting for the petty sessional division within which the woman resides (*R. v. Hughes* (1857), 26 L. J. M. C. 133 ; *Dears. & B. C. C.* 188 ; 3 Jur. (N.S.) 448).

But a woman having applied on two occasions for an order of affiliation to the justices of the petty sessional division in which she had been residing with her parents, and been refused after a hearing on the merits, took lodgings in a neighbouring borough, "because," as she deposed, "people said if she came there she would have a better chance," and when she had been there nearly a month applied to the borough justices and obtained an order of affiliation: —*Held*, that the object of the woman's removal was to obtain a new tribunal, and

therefore, she did not “reside” within the borough so as to give the borough justices jurisdiction under 7 & 8 Vict. c. 101, s. 2 (*R. v. Barber* (1863), 32 L. J. M. C. 138 ; 7 L. T. 785 ; *sub nom. Myott v. Barber*, 27 J. P. 119).

A woman was a farm servant living in the Penrith Division of Cumberland, and on August 21st, 1887, had an illegitimate child. On May 7th, 1888, the mother came overnight into the Cumberland Ward Division where the putative father was resident, and next morning obtained a summons against the defendant. The defendant appeared with a solicitor, and took no objection to the jurisdiction of the justices, and an order was made against him on May 19th. On June 17th the defendant's solicitor wrote to the woman's solicitor that the order was null and void for want of jurisdiction, and it was not obeyed. On June 30th the woman went to the magistrates of the Cumberland Ward Division, and applied for a summons against the defendant for disregard of the order. The objection was then taken that the original order was without jurisdiction, but the justices overruled the objection on the grounds that the woman was within their jurisdiction when the order was made, and that objection had not been taken when the order was applied for. A warrant was, therefore, issued, and the man arrested.

On an application for a *habeas corpus* to discharge him from custody :—*Held*, that the order was invalid as the woman was not resident in the division to the justices of which she had made the application, and that the writ of *habeas corpus* must issue (*Vevers v. Mains* (1888), 4 T. L. R. 724).

Where a member of a benefit society complaining of relief having been improperly refused applies for a summary remedy under 49 Geo. 3, c. 125, which provides that the application must be made to two justices residing within the county in which such society is held, it was held that unless the application was made to such justices, proceedings upon it was null and void (*Sharp v. Aspinall* (1829), 10 B. & C. 47 ; see also *R. v. Morice* (1845), 1 New Sess. Cas. 586 ; *In re Peerless* (1841), 1 Q. B. 143 ; *R. v. Hickling* (1845), 7 Q. B. 890 ; 15 L. J. M. C. 23).

(i) “SUMMONS.”—An informality in the summons may be amended by the justices at the hearing. On September 18th, 1891, a summons was taken out against the defendant in respect of a child born

in July, 1890, the summons stating the birth was within twelve calendar months, which, of course, being wrong, the summons was dismissed on that ground. Another summons was then taken out for September 28th on another charge, that the defendant, within twelve calendar months from the birth, had paid money for the maintenance of the child, but this summons still retained the statement that the birth was within twelve calendar months of the application. On objection being taken to the summons on this ground by the defendant's solicitor, the justices amended by striking out the words objected to:—*Held*, that the justices had jurisdiction to do so (*Bell v. Clubbs* (1892), 8 T. L. R. 297).

As to the form of summons, see Appendix, *post*, pp. 134 *et seq.*

(k) "IF SUCH APPLICATION BE MADE BEFORE THE BIRTH OF THE CHILD, THE WOMAN SHALL MAKE A DEPOSITION UPON OATH STATING WHO IS THE FATHER OF SUCH CHILD."—If the woman fails to make the deposition in writing on oath, and the summons is issued, it has been held that this is a matter of process, the irregularity of which is waived if the defendant appears to the summons, and takes no objection at the hearing.

A summons was issued by a justice to the putative father of a bastard child upon an application made by the mother before the birth. No written deposition was made at the time of the application. The parties appeared at the sessions according to the exigency of the summons, and the case was heard without objection, when the father swore wilfully and falsely to a material fact:—*Held*, that the appearance at petty sessions and the hearing without objection raised cured the defect in the application for the summons, if any, and the justices in petty session had jurisdiction to hear the parties before them, and that the father was rightly convicted of perjury. *Semble*, the deposition on oath required by 7 & 8 Vict. c. 101, s. 2, to be made on application by a mother before the birth of the child should be in writing (*BOVILL, C.J., contra; R. v. Fletcher* (1871), 40 L. J. M. C. 123 ; 24 L. T. 742).

As to the issuing of the summons and the time to be fixed for the appearance of the defendant when the application is made before the birth, see note to s. 4 of 8 Vict. c. 10, *post*, p. 95.

(l) "SIX DAYS AT LEAST."—This means six clear days exclusive both of the first and last days The justices have no jurisdiction to

hear the case in the absence of the defendant, unless there is sufficient proof on this point, for if there is defect in this matter in the service of the summons the proceedings will be abortive, and enforcement of any order made on such proceedings may give rise to an action of trespass to which the order is no defence.

*The Debtor's Imprisonment Act, 1758, 32 Geo. 2, c. 28*, requires that notice to the creditor should be given fourteen days at least before the petition is presented:—*Held*, that fourteen days “at least” means fourteen clear days exclusive both of the day of service and that of presenting the petition (*Zouch v. Empsey* (1821), 4 B. & Ald. 522).

By a statute an appellant was required to give seven days' notice at least of his intention to bring an appeal:—*Held*, that the seven days must be reckoned exclusive both of the entire day of giving the notice and the first day of sessions, as the fraction of the day is not to be considered in such calculation (*R. v. Middlesex JJ.* (1845), 2 New Sess. Cas. 73).

Where a summons was to be served “ten days at least” before the time appointed therein for the hearing:—*Held*, there must be ten clear days between the service and the day of hearing, and that where the conviction shows on its face that the party was convicted on *ex parte* in default of appearance to a summons appointing too early a day, such conviction is no defence to an action of trespass for enforcing it (*Mitchell v. Foster* (1840), 12 A. & E. 472; see also *Smith v. Ewens* (1874), 39 J. P. 724 n).

(m) “PETTY SESSIONAL DIVISION, CITY, BOROUGH, OR OTHER PLACE IN WHICH SUCH JUSTICE USUALLY ACTS.”—Where the justice who receives the application acts for two or more petty sessions in his division, he may require the defendant to appear at the petty session in any such division as he shall deem fit. See 8 & 9 Vict. c. 10, s. 10, p. 100.

4. *Justices in Petty Session may make an order on the putative father for maintenance, education, etc., of bastard child, and enforce the same by distress and commitment.*] After the birth of such bastard child (a), on the appearance of the person so summoned, or on proof that the summons was duly served (b) on such person, or left at his last

place of abode (*c*), six days at least before the petty session, the justices in such petty session (*d*) shall hear the evidence of such woman (*e*) and such other evidence as she may produce (*f*), and shall also hear any evidence tendered by or on behalf of the person alleged to be the father, and if the evidence of the mother be corroborated in some material particular (*g*) by other evidence to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child; and they may also, if they see fit, having regard to all the circumstances of the case (*h*), proceed to make an order (*i*) on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child, under the provisions of the said recited Act, of a sum of money weekly (*k*), not exceeding five shillings a week, for the maintenance and education of the child, and of the expenses incidental to the birth of such child (*l*), and of the funeral expenses of the child, provided it has died before the making of such order, and of such costs as may have been incurred in the obtaining of such order (*m*); and if the application be made before the birth of the child, or within two calendar months after the birth of the child, such weekly sum may, if the said justices think fit, be calculated from the birth of the child (*n*); and if at any time after the expiration of one calendar month from the making of such order as aforesaid it be made to appear to any one justice (*o*), upon oath or affirmation, that any sum to be paid in pursuance of such order has not been paid, such justice may, by warrant (*p*) under his hand and seal, cause such putative father to be brought before any two justices, and in case such putative father neglect or refuse to make payment of the sums due from him under such order (*q*), or since any commitment for disobedience to such order as hereinafter provided, together with the costs

attending such warrant, apprehension, and bringing up of such putative father, such two justices may, by warrant under their hands and seals, direct the sum so appearing to be due, together with such costs, to be recovered by distress (*r*) and sale of the goods and chattels of such putative father, and may order such putative father to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he give sufficient security, by way of recognisance (*s*) or otherwise, to the satisfaction of such justices, for his appearance before two justices on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant, or if by the admission of such putative father, it appear that no sufficient distress can be had, then any such two justices may, if they see fit, by warrant (*t*) under their hands and seals, cause such putative father to be committed (*u*) to the common gaol or house of correction of the county, city, borough, or place where they have jurisdiction, there to remain, without bail or mainprize, for any term not exceeding three calendar months (*v*) unless such sum and costs, and all reasonable charges attending the said distress, together with the costs and charges attending the commitment and conveying to gaol or to the house of correction, and of the persons employed to convey him thither, be sooner paid and satisfied.

(a) "AFTER THE BIRTH OF SUCH BASTARD CHILD."—The child must be born in England. A bastardy order cannot be made on the putative father in respect of a child born abroad, although the mother became pregnant while domiciled and resident in England, and returned to England with the child shortly after its birth (*R. v. Blane* (1849), 13 Q. B. 769; 3 New Sess. Cas. 597; 18 L. J. 216; 13 Jur. 854).

A ship on the high seas is part of the territory of the State to which she belongs, and a bastard child, of which a woman is delivered on board an English ship, is to be deemed to be born in England, and the mother is entitled to an order of affiliation against the putative father resident in England (*Marshall v. Murgatroyd* (1870), L. R. 6 Q. B. 31 ; 40 L. J. 7 ; 23 L. T. 393 ; 19 W. R. 72).

It is immaterial whether the child was begotten in a foreign country or whether the father is a foreigner if the child is born in England.

An appellant having been summoned before justices was adjudged to be the putative father of the bastard child of the respondent, and ordered to provide for its maintenance according to the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 3. The child was born in Cornwall. The appellant was an Irishman and the respondent an Englishwoman, and the connection, which resulted in the birth of the child, took place in Ireland. The summons was duly served on the appellant:—*Held*, the child having become chargeable in England, the justices had jurisdiction, and the order was good (*Hampton v. Rickard* (1874), 43 L. J. M. C. 133 ; 38 J. P. 646).

No order for affiliation or for payment of expenses can be made unless the child is born alive (*Rex v. De Brouquens* (1811), 14 East, 277).

If the woman has been delivered of twins it is wisest to make a separate application, and obtain a separate summons and order in the case of each child.

As to the registration of an illegitimate child, see 37 & 38 Vict. c. 88, s. 7, Appendix, *post*, p. 128.

(b) "ON PROOF THAT THE SUMMONS WAS DULY SERVED."—The proof required is given by the oath of the party who served it, except in cases specially provided for under s. 4 of 36 Vict. c. 9.

As to the service of summonses generally, see *Re William Smith* (1875), 32 L. T. 394.

A summons cannot be served on a putative father out of England or Wales.

On October 30th, upon application made by the mother of a bastard child to a justice acting for the petty sessional division in which she resided, a summons was issued to J. L., the alleged father

of the bastard, requiring him to appear at a petty sessions to be holden at P., for the said division, on November 17th, to answer the complaint. J. L. was a British subject recently residing within the said division, but then living in Scotland and having no place of abode in England. He was personally served with the summons in Scotland on November 1st, in time to have attended at P. on the 17th. He did not so appear, and the justices, being of the opinion that the summons had been duly served, and, on the evidence of the mother, corroborated in a material particular, made an order adjudging J. L. to be the putative father :—*Held* (*dissentiente* Lord CAMPBELL, C.J.), that they had no jurisdiction to make the order, as the service of the summons beyond the limits of England and Wales was not due service (*R. v. Lightfoot* (1858), 6 E. & B. 822 ; 25 L. J. M. C. 115 ; 3 Jur. (N.S.) 796 ; 4 W. R. 655).

This rule is not affected by 44 & 45 Vict. c. 24, s. 6 (see *post*, p. 123), which does not enable a bastardy summons to be issued by justices in England and served in Scotland upon the putative father domiciled and resident in Scotland ; and if a summons is served and the putative father does not appear before the justices they have no jurisdiction to make a bastardy order against him (*Berkley v. Thompson* (1884), 10 App. Cas. 45 ; 54 L. J. M. C. 57 ; 49 J. P. 276 ; 33 W. R. 525).

As to service out of the jurisdiction, see p. 122.

(c) "HIS LAST PLACE OF ABODE."—Much discussion and many cases have been decided on the meaning of these words, and the result, as gathered from the following decisions, it is submitted is this : The last place of abode is the last known place of abode in England at which the defendant has been living. If he has left it *bonâ fide* for the purpose of going abroad, and has acquired another place of residence there, then the applicant has no remedy, as the place where he lived in England is not his last place of abode, but if he has left merely to avoid service and has no place of abode elsewhere, then his late home in England will be his last place of abode. The question is really a matter of fact upon the inferences to be drawn from the evidence, as will be seen from the decisions in *R. v. Farmer* and *R. v. Webb*, *post*, pp. 30, 31.

B., the alleged father of a bastard, resided with his parents, and had set out for a month's tour, which he took annually at the same

season of the year, leaving word he would be back in a month, but leaving no address where he might be found in the meantime. During his absence an affiliation summons was served at his father's house. At the hearing his mother attended before the justices and explained that her son was from home and knew nothing of the summons, but if the hearing was adjourned for a fortnight, he would then have returned home. The justices refused to adjourn the hearing and made the order, which was regular *ex facie*:—*Held*, though the justices would have exercised a wise discretion in adjourning the hearing, still, as they had complied with the statute, the court had no right to grant a *certiorari* according to the recognised rule of only granting it in case of defective jurisdiction appearing *ex facie* (*R. v. Brown* (1859), 1 L. T. (N.S.) 29; 24 J. P. 5).

Under 7 & 8 Vict. c. 101, s. 3, which enables justices in petty sessions to make an order of maintenance on the putative father of a bastard (although he does not appear and there has been no personal service of the summons upon him) on proof that the summons was left at his last place of abode "six days at least before the petty session," the summons must be left at his present place of abode if he has any at the time of service, or at his last place of abode if he has none. Proof of the proper service of the summons is essential to give the justices jurisdiction, and, *semble*, an allegation in the order that such proof has been given, as averred in the Form No. 8 in the schedule of the statute 8 & 9 Vict. c. 10 (now repealed, and forms issued by the Local Government Board substituted, see *post*, pp. 133 *et seq.*), is necessary to the validity of the order. If a summons is left at a place, which the person leaving it believes to be the last place of abode of the party summoned, and gives evidence of the serving of the summons before the justices at petty sessions, the latter have *prima facie* jurisdiction to make the order of maintenance, but the party summoned is at liberty to show by affidavit that the summons was not served at his last place of abode, and if the fact be proved, the court will grant a *certiorari* to bring up the order to quash it as being made without jurisdiction (*R. v. Evans* (1850), 4 New Sess. Cas. 191; 19 L. J. 151; 1 L. M. & P. 35).

An affiliation summons was left at the abode of the putative father eight days after he had quitted it for Liverpool on his way to America. He remained at Liverpool four days before sailing. An order was made against him in his absence. On an application for

a *certiorari* to bring up and quash the order, the putative father swore that he did not leave the country to avoid the service of the summons, but he did not deny the paternity:—*Held*, that the summons had been left at his last place of abode, and as the order was regular and the truth of the charge not denied, the court would not interfere (*R. v. Davis* (1853), B. C. C. 191 ; 22 L. J. M. C. 143 ; 17 Jur. 577. See *R. v. Farmer*, *post*, p. 30).

An affiliation summons against H. was served at the house of H.'s father. An attorney appeared to the summons before the justices for the petty sessional division of B., in the county of N., representing himself to be authorised to appear for H. In fact, he was retained and paid by H.'s father. He examined and cross-examined witnesses. An order was drawn up purporting to be made on the complaint of the mother, residing at M. within this county, and to be made as on a contested summons, the defendant appearing by attorney. In fact, M. was not only in the county, but in the petty sessional division of B., as was well known to every one, but nothing was said about it. H. deposed that a few days before the summons was served he, anticipating annoyance from the woman, left his father's house, which, up to that time, had been his abode, without any intention to return, and was not informed of the proceedings before the justices. A rule to quash the order having been obtained on the ground that the attorney was not authorised to appear and that the order did not mention M. was within the division:—*Held*, that the court would infer, in fact, that H., leaving his abode avowedly for a temporary motive, did intend to return when the motive ceased, notwithstanding his deposition to the contrary, and that, such being taken to be the fact, the summons was duly served, and that all proper to be proved in an unopposed summons having, in fact, appeared before the justices and the state of proof being such as would justify them in drawing up an order stating M. to be in the division of B., the omission and mistakes were amendments by this court under 12 & 13 Vict. c. 45, s. 7 (*R. v. Higham* (1857), 7 E. & B. 557 ; 26 L. J. 116 ; 22 J. P. 6 ; 5 W. R. 537 ; 5 Jur. (n.s.) 691).

A summons was obtained by the mother on October 3rd, 1866, and served on October 4th at a farm house at Tetcott, where the defendant had been lodging for some years, by leaving it with the wife of the occupier of the house. The order was made on

December 6th, in the absence of defendant, on proof of such service. The defendant afterwards made an affidavit that he left the house on October 1st with the intention of going to America, and sailed in a steamship from Plymouth on October 14th ; that he did not leave for the purpose of avoiding the summons ; that he first heard of the summons and order when he had been in America two months ; and that he was not the father of the child. The mother made an affidavit to the contrary :—*Held*, that the summons was served at his last place of abode (*R. v. Damarell* (1867), L. R. 3 Q. B. 50 ; 8 B. & S. 659 ; 37 L. J. M. C. 21). “All we have to inquire is whether the summons was left at the last place of abode of the man. He left the house where he had been lodging for a long time for the express purpose of going to America ; therefore, he had no other place of abode, and that was his last place of abode” (*per* COCKBURN, C.J., *ibid.*).

The complainant was delivered of a child on May 11th, 1887. A bastardy summons was issued against the defendant, who had for some years been living at his father's house. This summons was dismissed on July 29th, the defendant appearing and swearing he was not the father of the child. A second summons was dismissed, having been taken out in a wrong name, the solicitor for the complainant then stating he would issue another summons, and, on the same day, October 8th, a third summons was taken out and served at the house of defendant's father. This summons was heard on November 5th, and an order made against the defendant. To the constable who served the summons the father said his son had gone away and that he did not know where he was. On December 10th, a warrant was issued against the defendant charging him with perjury committed on the hearing of the first summons. On May 12th, 1888, a year and one day after the birth of the child, the defendant surrendered to the warrant. From October 8th till May 12th, the complainant was unable to discover where the defendant was. The defendant himself made an affidavit, in which he said that in September he left his father's house as he had found employment with a farmer at Gloucester ; that he had no intention of returning ; and that from September 26th till May 12th, he had lived continuously in lodgings where he was employed, and that he knew nothing of the third summons until November 16th, when his sister sent him a newspaper containing a report of the case :—*Held*,

by MANISTY, J., that the father's house was the last place of abode of the defendant, and that the service there was good ; following *R. v. Higham*, ante :—*Held*, by STEPHEN, J., following *R. v. Evans*, ante, that the defendant's last place of abode was Gloucester, and the service at the father's house was bad (*R. v. de Winton* (1888), 51 L. T. 382 ; 53 J. P. 292). On appeal, the court thought the affidavit of the putative father sufficient to show he went away to avoid service, and, therefore, the appeal must be dismissed.

A mother was delivered of a child on April 18th, 1887, and she applied to a justice for a summons against the defendant, the alleged putative father, which was served on May 18th, 1887, at the house of a baker at Sunbury. The defendant had been in the service of the baker from September 25th, 1886, till April 20th, 1887. When a constable left the summons the baker told him the defendant had left the place and his place of residence was not known, though he had called on May 14th to fetch away some things. The defendant afterwards made an affidavit that he left Sunbury on April 20th, 1887, to better himself, and that he went to Southampton and remained there till May 19th, when he got a situation in a ship and sailed for the West Indies. The justices, at the hearing, having received evidence of the service of the summons at Sunbury, made an order on the defendant :—*Held*, on appeal, that the service was valid (*R. v. Lee* (1888), 58 L. T. 386 ; 52 J. P. 345 ; 36 W. R. 416).

At the hearing of an application for an affiliation order evidence was given that the summons had been served by being left at the house where the person alleged to be the father of the child resided. He did not appear, and the justices heard evidence and adjudged him to be the putative father of the child and made an order accordingly. He subsequently applied for a *certiorari* to bring up this order to be quashed on the ground that the summons had not been properly served, and he established that at the date of the service of the summons he had left the house at which it was served and was resident in America :—*Held*, that as the jurisdiction of the justices only attached on proof that the summons was duly served, the court had power to inquire into the validity of the service, and would grant a *certiorari* if it was shown that the service was invalid :—*Held*, also, that as the person served had at the date of the service of the summons a place of abode in America,

that, and not the house at which the summons was served, was at that time his last place of abode within s. 4 of the Bastardy Laws Amendment Act, 1872, and that service was consequently invalid (*R. v. Farmer*, [1892] 1 Q. B. 639 ; 61 L. J. M. C. 55 ; 65 L. T. 736 ; 56 J. P. 341 ; *sub nom. R. v. Salford JJ.*, 40 W. R. 229). "If the defendant went to America with the intention of returning, or for the mere purpose of avoiding service, I should say he had no place of abode in America. In such a case it would be true to say his last place of abode was his father's house. Is there sufficient evidence on which we can safely say he went to America to live there? I think that is the conclusion we must come to ; if so, he had a place of abode in America" (*per* Lord ESHER, M.R., *ibid.* ; see also *R. v. Webb*, *post*).

By the Bastardy Laws Amendment Act, 1872, s. 4, after the birth of a bastard child, on proof that the summons was left at the last place of abode of the person summoned six days at least before the petty sessions, the justices may make an order. Shortly after the birth of the child defendant left the house where he had up to that time resided and went to America, but the evidence did not show that he had any place of abode in America. Ten days after the birth a summons was left at the house where he had resided :—*Held*, that this house was his last place of abode within the meaning of the Act, and the service was sufficient (*dictum* of Lord SELBORNE in *Berkley v. Thompson* (1885), 10 App. Cas. 45, at p. 49, explained and distinguished). The *dictum* of Lord SELBORNE is as follows : "It is impossible to read that provision (s. 3 of the Act of 1872) without seeing that this legislation proceeds upon the footing that the presence of the putative father is necessary for the jurisdiction to attach . . . because the general principle of law is '*actor sequitur forum rei*'—not only must there be a cause of action of which the tribunal can take cognisance, but there must be a defendant subject to the jurisdiction of that tribunal ; and a person resident abroad . . . and not brought by any special statute or legislation within the jurisdiction is *prima facie* not subject to the process of a foreign court ; he must be found within the jurisdiction to be bound by it." This passage was cited by KAY, L.J., in *R. v. Farmer*, *ante*, who said : "As at present advised, I agree with the opinion expressed in *Berkley v. Thompson* that, in the absence of the putative father from England, the Act does not provide for service

of the summons, especially looking at the provisions of s. 3, giving power to take proceedings within twelve months next after his return to England." COLLINS, J., in his judgment, dealt with the point as follows: "The defendant was out of the jurisdiction when the summons was served, and it is contended that the *dictum* of Lord SELBORNE, in *Berkley v. Thompson*, *ante*, which has been referred to, shows that the service was invalid, and it is said that in *R. v. Farmer*, KAY, L.J., expressed his agreement with that view. I am of opinion that s. 4 absolutely entitles the applicant to have the summons served at the man's last place of abode, for the section says nothing about the person served being within or out of the jurisdiction. I also think that the provisions of s. 3 are not inconsistent with this view. The same conclusion is supported by the *ratio decidendi* in *R. v. Farmer*, *ante*." The *dictum* in *Berkley v. Thompson* was altered in a case where the point was whether service out of the jurisdiction was good, and it was directed to that question (*R. v. Webb*, [1896] 1 Q. B. 487; 63 J. P. 280).

(d) "JUSTICES IN SUCH PETTY SESSIONS."—12 & 13 Vict. c. 18, s. 1, enacts that "Every sitting and acting of justices of the peace, or of a stipendiary magistrate, in and for any city, borough, or town corporate having a separate commission of the peace, or any part thereof, within England and Wales, at any police court or other place appointed in that behalf, shall be deemed a petty sessions of the peace, and the district for which the same shall be holden shall be deemed a petty sessional division, within the meaning of any Acts of Parliament, already made or hereafter to be made, having relation to such petty sessions, or to any business to be transacted thereat."

(e) "EVIDENCE OF SUCH WOMAN."—A bastardy order cannot be made without the mother of the child being examined as a witness on the hearing. Where, therefore, the mother died after the issue of the summons, but before the hearing:—*Held*, there was no jurisdiction to make an order (*R. v. Armitage* (1872), L. R. 7 Q. B. 773; 42 L. J. M. C. 15; 27 L. T. 41; 20 W. R. 1015; *sub nom. Jessop v. Brierly*, 36 J. P. 488).

The justices cannot take or receive in evidence the dying deposition of the mother. The statute requires the order shall be made at a petty session "holden for the petty sessional division." The order cannot, therefore, be made at a private house, inasmuch as a

session which is holden there cannot have been holden "for the petty sessional division," and consequently an order so made would be made without jurisdiction. The statute further requires that "the justices shall hear the evidence of the woman," that is, her *viva voce* evidence, but gives them no power to receive her dying declaration. See 23 J. P. 11.

Nor, is it contended, can the justices legally adjourn the hearing to the woman's house in order to take her evidence in case of her serious illness, even if the defendant is given an opportunity of attending and cross-examining her.

By s. 20 of 42 & 43 Vict. c. 49, and s. 13 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63) (see *R. v. Shingler* (1886), 17 Q. B. D. 49), justices sitting to hear a complaint in bastardy are a court of summary jurisdiction, and must sit in open court and this is taking into consideration s. 55 of 11 & 12 Vict. c. 43; see also 57 J. P. 443.

As to the cross-examination of the woman, she may be asked if she has had connection with other men, and if she denies it, witnesses cannot be called to contradict her, as the cross-examination is only as to credit. But if the cross-examination as to intercourse with another man is directed to the main question at issue, viz., the paternity of the child, evidence can be called to contradict her.

On the hearing of an application for an order of affiliation against H. in respect of a full-grown bastard child born in March, the mother, in answer to questions put to her in cross-examination, denied having had carnal connection with G. in the September previous to the birth. G. was called to contradict her; the justices admitted his evidence, and he wilfully and falsely swore he had carnal connection with her at the time specified:—*Held*, that although the evidence of G. ought not to have been admitted to contradict the mother on a matter which went only to her credit, still, as it was admitted, it was evidence material to her credit; and consequently so far material on the inquiry before the justices as to be capable of being made the subject of an indictment against G. for perjury (*R. v. Gibbons* (1862), 31 L. J. M. C. 98; 5 L. T. 805).

It is clear the question put to the witness was a pertinent question, so far as she was concerned, and on which she was bound to

answer. It is true it did not go to the main issue in the case, which was as to the paternity of the child, but it had reference indirectly to it as to how far the complainant was deserving of credit; but all parties should have been bound by the answer she gave (*per* COCKBURN, C.J., *ibid.*).

If, upon the hearing of a bastardy summons against A., the mother deny that B. has had connection with her at a particular time, evidence may be given to show that B. had such connection with her, supposing the effect of such evidence is not merely to contradict her, but also to show that B. might by means of that connection have been the father of the child; such evidence being material to the issue (*R. v. Gibbons*, distinguished; *Garbutt v. Simpson* (1863), 32 L. J. M. C. 186; 8 L. T. 423; 11 W. R. 751).

If the applicant is a married woman, neither she nor the husband can give evidence of non-access of the husband. For a full discussion of her evidence as to this and the rules which govern it, see chapter on "Legitimacy," *post*, p. 105.

(f) "AND SUCH OTHER EVIDENCE AS SHE MAY PRODUCE."—A proceeding in bastardy being a civil and not a criminal proceeding, the alleged putative father is a competent witness, not only in his own defence, but he can be called in support of the complainant. See judgment of WIGHTMAN, J., in *Gothard v. Laxton*, *post*, p. 49, and the judgment of Lord CAMPBELL, C.J., in *Cattle v. Ireson* (1858), 27 L. J. M. C. 167.

The defendant may refuse to go into the witness box and give evidence for the complainant, unless he has been previously summoned as a witness by her, but should he consent to give evidence, although not summoned as a witness, he is bound to answer, and may be committed by the justices if he refuses.

"In my opinion when a man goes into a witness box and takes the oath, and is sworn to give evidence in the matters relating to the charge, he has come before the justices, and they have jurisdiction to compel him under pain of commitment to answer relevant questions" (*per* HAWKINS, J., in *R. v. Flavell* (1884), 14 Q. B. D. 364; 52 L. T. 133; 49 J. P. 406).

If the guardians have already obtained an order, such order is *prima facie* evidence that the man upon whom the order is made is the father of the child (36 Vict. c. 9, s. 5, *post*, p. 65).

The power of summoning a witness is given by 7 & 8 Vict. c. 101, s. 70 :

"In any proceedings to be had before justices in petty or special sessions, or out of sessions, under the provisions of this Act or of any of the Acts required to be construed as one Act herewith, if any party to such proceedings request that any person be summoned to appear as a witness in such proceedings, it shall be lawful for any justice to summon such person to appear and give evidence upon the matter of such proceedings ; and if any person so summoned neglect or refuse to appear to give evidence at the time and place appointed in such summons, and if proof upon oath be given of personal service of the summons upon such person, and that the reasonable expenses of attendance were paid or tendered to such person, it shall be lawful for such justice, by warrant under his hand and seal, to require such person to be brought before him, or any justices before whom such proceedings are to be had ; and if any person coming or brought before any such justices in any such proceedings refuse to give evidence thereon, it shall be lawful for such justices to commit such person to any house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined, and in case of such submission the order of any such justice shall be a sufficient warrant for the discharge of such person."

Justices may, at the request of any party to bastardy proceedings before them, summon any person to appear and give evidence upon the matter of such proceedings, and if the person summoned neglect or refuse to appear the justices by warrant may require such person to be brought before him or any justices before whom such proceedings are to be had, and if such person coming or brought before such justice in any such proceeding refuse to give evidence thereon, the justices may commit such person to the house of correction :—*Held*, that the power to commit extended to any witness, and was not confined to witnesses who appeared in answer to a summons or warrant (*R. v. Flavell* (1884), 14 Q. B. D. 364 ; 52 L. T. 133 ; 49 J. P. 406 ; 33 W. R. 343).

On the hearing of a bastardy summons, the magistrates made an order that all witnesses should be out of court till examined. A witness who had remained in court was tendered, and they refused

to hear him. On an application for a *certiorari* to quash the order :—*Held*, that the proper remedy was by appeal to quarter sessions (*Ex parte Wright* (1875), 39 J. P. 85).

(g) “IF THE EVIDENCE OF THE MOTHER BE CORROBORATED IN SOME MATERIAL PARTICULAR.”—The following cases show the view the courts have taken as to what is corroboration of the mother’s evidence in some material particular :

Evidence was given by the woman’s brother, who deposed to a conversation held between him and the defendant. Witness said to the defendant, “She says she is in the family way by you.” He replied, “Well, I know she has got it.” Witness said, “Yes, and you must keep it”; to which he replied, “No, I sha’n’t; I would sooner go to America.” The court held this evidence was capable of being construed as an admission of paternity, and afforded sufficient ground for the decision of the justices that the mother’s evidence was corroborated in a material particular (*R. v. Pearcy* (1852), 17 Q. B. 902 n; 18 L. T. (o.s.) 238; 16 Jur. Q. B. 193).

“If two persons have a conversation, in which one of them makes a statement to the disadvantage of the other, and the latter does not deny it, there is evidence of an admission that the statement is correct” (*per* BRAMWELL, L.J., *ibid.*).

“Upon the hearing of a complaint in bastardy the statement of the mother as to the paternity of the child may be sufficiently corroborated by the evidence of acts of familiarity between her and the defendant, although these acts have taken place at a time before the child could have been begotten; for evidence of this is a corroboration of the mother “in some material particular” within the meaning of the Bastardy Laws Amendment Act, 1872, s. 4 (*Cole v. Manning* (1877), 6 Q. B. D. 611; 46 L. J. M. C. 175; 35 L. T. 941; 41 J. P. 469).

Silence of the defendant when taxed with being the putative father may amount to corroborative evidence.

In an action for breach of promise of marriage, the plaintiff having sworn that the defendant had seduced her, and had repeatedly promised to marry her, her sister gave evidence that at an interview she had with the defendant when she discovered her sister’s condition, she upbraided him for the ruin and disgrace he

had brought upon the plaintiff, when he said "he would marry her and give her anything, but I must not expose him." The sister further stated that, after the plaintiff's confinement, she overheard a conversation between the plaintiff and defendant, in the course of which the plaintiff said to the defendant, "You always promised to marry me and you don't keep your word," when the defendant said he would give her some money to go away:—*Held*, by the Court of Appeal, reversing the judgment of the C. P. D., that this was material evidence in support of the promise to satisfy the requirements of 32 & 33 Vict. c. 68, s. 2 (*Bessela v. Stern* (1877), 2 C. P. D. 265 ; 46 L. J. C. P. 467 ; 37 L. T. 88 ; 42 J. P. 197 ; 25 W. R. 561).

In an action for breach of promise of marriage, the mere fact that the defendant did not answer letters written to him by the plaintiff, in which she stated he had promised to marry her, was held no evidence corroborating the plaintiff's testimony in support of such promise (*Wiedemann v. Walpole*, [1892] 2 Q. B. 534 ; 40 L. J. Q. B. 762 ; 40 W. R. 114).

Silence is not evidence of an admission, unless there are circumstances which render it more reasonably probable that a man would answer the charge made against him rather than he would not (*per* BOWEN, L.J., *ibid.*).

On the hearing of a summons for an order of affiliation the mother, a servant girl, gave evidence that she "walked out" with the defendant on February 22nd and 25th, 1894, and never afterwards, and found herself in the family way in March. Evidence was given by witnesses that, in the September following, the defendant, a boy of nineteen, went with his mother to the house of the complainant's stepmother "to clear it up," but when the stepmother asked if he was the father, he did not answer. And the complainant's step-sister, being then present, also asked him "if he had been out with her sister," and he said "Yes, he had." The child was born on November 20th:—*Held*, this evidence was corroborative of the mother in a material particular (*Hill v. Denmark* (1895), 54 J. P. 345).

The corroboration may consist in acts which, innocent in themselves, may assume a different aspect owing to the relative social position of the parties. In corroboration of the evidence of the

mother, who was a servant to the appellant's grandfather, evidence was given that the appellant and respondent were seen "out together evenings in the lanes," and that after the birth of the child the appellant asked a witness whether the respondent, whom he spoke of familiarly as "Till," was going "to swear the child":—*Held*, by ALVERSTONE, L.C.J., and CHANNELL, J. (WILLS, J., diss.), that it was such evidence as would satisfy the statutory enactment (*Harvey v. Anning* (1903), 87 L. T. 687; 67 J. P. 13).

Payment of money for the maintenance of the child is corroborative evidence of paternity (*Hodges v. Bennett* (1860), 5 H. & N. 625; 29 L. J. M. C. 224; 2 L. T. 190; 8 W. R. 463).

An insufficiently stamped agreement by the father to maintain the child would be corroborative evidence. See 66 J. P. 700.

(h) "HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE CASE."—Among the circumstances which the justices may take into consideration are: the character of the woman, whether it is her first child, whether she was the seducer or the seduced, whether there was any promise of marriage made to her, the age and position of the parties, and also whether any money has been paid by the putative father towards the maintenance of the child; but no agreement by the woman to accept a sum down, in discharge of his liability, is a bar to the making of an affiliation order, though the justices have discretion to take such agreement or payments into consideration in fixing the amount to be paid under the order.

At a hearing by a metropolitan police magistrate, by respondent, the mother, against the appellant, the putative father of a bastard child, for an order under s. 3, it appeared that prior to the application appellant had contracted with respondent to pay her 5s. a week for the support of the child, had performed this contract for some time, and had then paid respondent in advance for another two years, of which a year and a half were still unexpired. At the time of making the payment in advance he had also paid her the further sum of £10, in consideration of which she had agreed to release him from all further payments in respect of the child. The magistrate, being of the opinion that the contract was void in law and ought not to be taken into consideration, made an order for the

payment of 2s. 6d. weekly to respondent by appellant. On appeal :—*Held, first*, the contract was not void in law, but that neither it nor the release was a bar to the magistrate's jurisdiction to make the order, such order being, under the statute, for the benefit of the child and not of respondent exclusively ; *secondly*, that the magistrate, in exercising his discretion whether or not to make the order, ought to have taken the contract into consideration as one of the circumstances of the case (*Follitt v. Koetzow* (1860), 2 El. & El. 730 ; 29 L. J. M. C. 128 ; 2 L. T. 178 ; 49 J. P. 508 ; 6 Jur. (N.S.) 651 ; 8 W. R. 432).

An order had been obtained by the appellant to contribute to the support of her bastard child. Subsequently to the making of the order, the respondent, in consideration of a sum of money, agreed to release and indemnify the appellant for ever from all actions, suits, and proceedings in respect of the child :—*Held*, this agreement was no bar to the jurisdiction of the justices to enforce the order on the application of the mother (*Griffith v. Evans* (1882), 46 L. T. 417 ; 30 W. R. 427).

Any agreement to pay the mother of an illegitimate child a sum of money in weekly instalments for the maintenance of a child may be determined at any moment by the death of the child. It is, therefore, a contract not to be performed within the year, and need not be in writing under the Statute of Frauds. The justices, therefore, can take into consideration, in fixing the amount payable under an affiliation order, any sums which have been already paid under a verbal agreement by the putative father.

The plaintiff was delivered of an illegitimate child in 1884, and on consideration of her forbearing to take steps to affiliate the child upon the defendant, the defendant verbally promised to contribute a certain sum per week towards its maintenance. The child was not affiliated, and the defendant paid the sums promised until the beginning of the year 1889. In 1886 the plaintiff intermarried with her present husband. In an action against the defendant for certain arrears under the agreement, it was contended that the agreement not being in writing was void under s. 4 of the Statute of Frauds :—*Held*, by the county court judge, that the agreement was one which might at any time be determined by the death of the child within the year, and that, therefore, the plaintiff

was enabled to recover (*Wilkinson v. Rushton*. 1889), 53 J. P. 440).

As to the stamp on such agreements, see 63 J. P. 385, Art.

The justices have also to take into consideration the statutes relating to soldiers.

The Army Act, 1881 (44 & 45 Vict. c. 58), s. 145, provides that—

- (1) A soldier of the regular forces shall be liable to contribute to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier ; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person, pay, arms, ammunition, equipments, instruments, regimental necessaries, or clothing ;
- (2) When any order or decree is made under any Act or at common law for payment by a soldier of the regular forces for the cost of maintenance of any bastard child of whom he is the putative father, a copy of such order or decree shall be sent to the Secretary of State ; and, in the case of such decree being so sent, the Secretary of State may order a portion not exceeding sixpence of the daily pay of a non-commissioned officer who is not below the rank of sergeant, and not exceeding threepence of the daily pay of any other soldier, to be deducted from such daily pay, and to be appropriated in liquidation of the sum adjudged to be paid by such order or decree ;
- (3) Where a proceeding is instituted against a soldier of the regular forces under any Act of Parliament or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or, if the proceeding is before a court of summary jurisdiction, out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs

incurred in obtaining the order or decree, if made against the soldier) sufficient to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose; and no process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if served after such soldier is under orders for service beyond the seas.

It is submitted that after a soldier has left the army no proceedings can be instituted against him for any arrears (being the difference between the weekly sum ordered by the justices and the sum fixed to be paid under s. 145 (2), *ante*) which accrued while he was in the army. See 61 J. P. 31. But if an order has been made against a civilian who subsequently enlists and then leaves the army, having paid nothing under the order, proceedings can be instituted against him after his discharge for the full amount of the arrears as there has been no payment "to be appropriated . . . on liquidation of the sum adjudged" within the meaning of s. 145 (2), *ante*. See 62 J. P. 93.

By the Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), s. 1, it is enacted that—

"If an order under the Acts relating to bastardy is made on a clergyman, then, after the date at which the order, . . . becomes conclusive, the preferment (if any) held by him shall, within twenty-one days, without further trial be declared by the bishop to be vacant as from the said date, and he shall be incapable, save as in this Act mentioned, of holding preferment."

No order can be made against a boy under fourteen years of age, even though evidence can be adduced of his competency (1 Hale, 620, 630; *R. v. Brimilow* (1840), 2 Moo. C. C. 122; *R. v. Groombridge* (1836), 7 C. & P. 582; *R. v. Jordan* (1839), 9 C. & P. 118).

There is no special legislation with regard to the Royal Navy, and sailors must be proceeded against under the ordinary law.

(1) "PROCEED TO MAKE AN ORDER."—An order in bastardy is made when the judgment of the justices is pronounced orally in court, and the formal written order is merely the record of the adjudication and may be drawn up afterwards and signed at any time (*Ex parte Johnson* (1863), 3 B. & S. 947).

The order must be substantially in the form settled by the Local Government Board under s. 6 of this Act. See Appendix, pp. 133, *et seq.*

It was formally decided that an order directing the payment to be made without any provision for its application to the maintenance and education of the child was invalid and should be quashed (*R. v. Padbury* (1879), 5 Q. B. D. 126 ; 49 L. J. M. C. 55 ; 44 J. P. 361 ; 23 W. R. 182). But by the Bastardy Orders Act, 1880 (43 & 44 Vict. c. 32 (see *post*, p. 131), it was provided that orders so made before the passing of the Act should not be or deemed to be invalid by reason of the omission from such order of the words for the maintenance and education of such child or words to the like tenour or effect. But this enactment only applies to orders drawn up prior to the passing of the Act, and if orders made since the statute are not drawn up materially in accordance with the forms provided by the Local Government Board, they will be invalid, and the reasoning in *R. v. Padbury*, *ante*, will apply.

The following cases show what have been decided to be material particulars which the order must contain :

An order for maintenance is bad if it allege that the sessions heard the corroboration of the mother's statement without adding that corroboration was in some material particular (*R. v. Read* (1839), 9 Ad. & E. 619).

When a person against whom a summons is obtained appears at the hearing, it is necessary that the order made upon him should state that the evidence was given in his presence and hearing, or the special circumstances should be stated, showing how it was that the evidence was not so given. An order of affiliation stated the appearance of the putative father, but the words "in the presence and hearing of the said," as provided for by the schedule to 8 & 9 Vict. c. 10, were struck out:—*Held*, on a motion for a *certiorari* to quash the order, that the order was bad for this omission (*R. v. Grafton, Ex parte Bann* (1848), 3 New Sess. Cas. 157 ; 2 B. C. Rep. 242 ; 5 D. & L. 568 ; 17 L. J. M. C. 125 ; 12 Jur. 53 n).

In drawing up the order the words, "having heard all the evidence tendered by the defendant" are properly omitted when the defendant tenders no evidence, and the order need not in such case state that he offered no evidence (*R. v. Percy* (1852), 17 Q. B. 902 ; 21 L. J. M. C. 129).

An order commenced "Whereas S. (the putative father) having been duly served with the said summons, etc., and now appearing in pursuance thereof," proceeded as follows: "And it being now proved to us in the presence of," etc., "of the attorney attending on behalf of S. that the child was born a bastard," etc., "and we having in the presence of the said attorney," etc., "heard the evidence of the mother, and no evidence having been tendered on behalf of S." It then adjudged S. to be the putative father:—*Held*, sufficient under 8 & 9 Vict. c. 10:—*Held, also*, that the form of the order given to the schedule in that Act does not require it to be set out that the evidence was given upon oath (*R. v. Shipperbottom* (1847), 10 Q. B. 514; 2 New Sess. Cas. 641; 16 L. J. M. C. 113; 11 Jur. 520).

An order in bastardy must show on the face of it that it was applied for within forty days of the service of the summons on the putative father (*R. v. Rose* (1845), 2 New Sess. Cas. 106; 15 L. J. M. C. 6).

An order in bastardy made under 7 & 8 Vict. c. 101, did not state that the evidence of the mother was given on oath, but substantially followed the form given in the schedule to 8 & 9 Vict. c. 10. which was passed for the purpose of curing defects of form in orders under the former Act:—*Held*, that as the latter statute rendered valid all orders made according to the form given in the schedule, or to the like tenour and effect, the above omission was immaterial, and that the words on oath were not required to be inserted in the form given in the schedule (*R. v. Cheshire JJ.* (1845), 3 D. & L. 337; 2 New Sess. Cas. 161; 15 L. J. M. C. 3; 10 Jur. 311).

The caption of an order adjudicating a party to be the father of a bastard child stated that it was made "at a petty session of her Majesty's justices of the peace for the said riding," etc., "holden before us, the Rev. F. S. Clerk and T. P. Eyre, her Majesty's justices of the peace for the said riding and a majority of the justices now present." The order was signed by F. S. and T. P.:—*Held*, on a motion to quash the order which has been brought up by a *certiorari*, that it must be taken in effect to state that F. S. and T. P. were justices of the peace and a majority of those present (*Ex parte Boynton* (1850), 1 L. M. & P. 12).

An order under 7 & 8 Vict. c. 101, s. 3, did not state that the place of residence of the mother was in the petty sessional division

for which the justices acted; but the summons which was in evidence before the justices did state that fact:—*Held*, that all proper to be proved in an unopposed summons having in fact appeared before the justices and the state of proof being such as would justify them in drawing up an order, stating the residence of the mother to be in the petty sessional division for which the justices were acting, the omissions and mistakes were amendable by the court under 12 & 13 Vict. c. 45, s. 7 (*R. v. Higham* (1857), 7 El. & Bl. 557; 26 L. J. M. C. 176; 3 Jur. (N.S.) 691). See also *R. v. Tomlinson*, *post*, p. 85.

An order of affiliation recited the application for a summons on the putative father of the child had been made by the mother to J. M., one of her Majesty's justices of the peace usually acting in this division:—*Held*, the jurisdiction of the justice sufficiently appeared as the words "in" and "for" are used synonymously in the schedule to 8 & 9 Vict. c. 10 (*R. v. Milner* (1845), 2 New Sess. Cas. 54; 3 D. & L. 128; 14 L. J. M. C. 157; 10 Jur. 334).

It has been held that an order of maintenance made under the Bastardy Act, 1872, but which was in the form to the schedule of 8 & 9 Vict. c. 10, directing the payment to the mother, without any provision for its application to maintenance and education of the child, was invalid and must be quashed (*R. v. Padbury* (1880), 5 Q. B. D. 127; 49 L. J. Q. B. 55; 44 J. P. 361; 28 W. R. 182; but see Bastardy Orders Amendment Act, 1880, *post*, p. 131).

If the petty sessional division is not correctly described in the order, the order will be bad.

An order of affiliation purported to be made at a "petty session of justices for the county of L. holden in and for the petty sessional division of H., in the said county at H. aforesaid," and recited the application of the mother "residing at N. within this division to a justice acting for this division," for a summons, and that the justice issued his summons "to appear at a petty session to be holden on this day for this division in which the said justice usually acts." There was in the county of L. a petty sessional district called B. within which petty sessions were usually held, at H., among other places. H. was within B., and the justices who made the order resided in H. and had long been used to act for townships in the neighbourhood of H., including the townships of N. and H. But no

petty sessional division of H. had been formed under statute 9 Geo. 4, c. 43, or 5 & 6 Will. 4, c. 12 :—*Held*, that the quarter sessions, on appeal against the order, could take judicial notice of the petty sessional divisions of the county, and that the order was bad as showing want of jurisdiction, though it showed that the party summoned had appeared ; that upon these facts there was no petty sessional division of H. within the meaning of 7 & 8 Vict. c. 101, s. 2, and 8 & 9 Vict. c. 108, s. 10, and that the order could not be understood as describing a session for the petty sessional division of B. holden at H. (*R. v. Whittles* (1849), 13 Q. B. D. 248 ; 3 New Sess. Cas. 397 ; 18 L. J. M. C. 96 ; 13 Jur. 403).

An order of affiliation, void for defects appearing on the face of it, is altogether a nullity and may be treated just as if the justices who made the order had never heard the case at all, and it is not necessary to proceed either by way of appeal or writ of *certiorari* in order to quash it.

The justices had on January 1st made an order against the defendant, which order stated the appearance of the putative father in pursuance of the summons to appear, but omitted to state that the evidence had been heard by the justices "in his presence and hearing." The order was served, but no payment was made under it, and on April 25th the same justices endorsed upon the order a *supersedeas* under their hands and seals, by which in terms they absolutely and irrevocably annulled and made void the said order upon the ground that it was invalid according to law, by reason of certain errors therein and omissions therefrom. The *supersedeas* was served on the defendant, and on the next day a fresh complaint was lodged and a fresh summons issued by the justices. The defendant protested against the jurisdiction of the justices, who made a second order on May 6th :—*Held*, that the justices had jurisdiction to make the second order, although the first had not been got rid of on appeal or writ of *certiorari*, and that an indictment for disobedience of it was maintainable (*R. v. Brisby* (1849), 18 L. J. M. C. 157).

Where an order has been drawn up which does not correctly state the decision of the justices, it can be treated as null and void without proceeding either by way of appeal or writ of *certiorari*, in order to quash it, and the justices can draw up and sign a fresh order correctly stating their decision.

Justices signed two orders intended to be duplicates, but by mistake the order served upon the father ordered the mother instead of the father to pay one shilling and sixpence a week ; afterwards a correct copy of the order was drawn up and served upon the father:—*Held*, as there was only one order made, the service of an incorrect copy of it could not vitiate the order, but that a correct copy might afterwards be drawn up, served, and enforced (*Wilkins v. Hemsworth* (1838), 7 A. & E. 807).

Two justices, on January 30th, 1872, adjudicated the defendant to be the father of a bastard child and ordered him to pay two shillings a week from the date of its birth towards its maintenance. An order, in writing, was drawn up by the clerk and signed by the justices who adjudicated upon the summons, and served on the defendant, but it was subsequently ascertained that in this document the sum of two shillings and sixpence had been inserted whereas the sum of two shillings only ought to have appeared, and that the date of the birth of the child had been altogether omitted. No proceeding was, therefore, taken to enforce it, and the defendant refused to make and did not make any payment to the complainant. The complainant in May, 1892, applied to the justices for a proper order, and an order dated January 30th, 1892, embodying correctly the verbal adjudication of that date, was thereupon made out and signed by the same justices and served on the defendant, who refused to obey it, and the payments under it being in arrear, he was committed to prison pursuant to the provisions of 7 & 8 Vict. c. 101, s. 3. On an application for a writ of *habeas corpus*:—*Held*, that the same justices were entitled to cause a second order to be drawn up and enforced embodying correctly the terms of their adjudication, notwithstanding the first order had not been quashed, and notwithstanding there had been no fresh summons or hearing or tender of costs (*R. v. Lanyon* (1872), 27 L. T. (N.S.) 355).

It was objected that the justices had no power to make the second order till the first had been quashed on appeal or *certiorari*, or that if the applicant was entitled to treat the first order as a nullity, no second order could be made, except after a fresh summons and a fresh hearing and after the tender of the costs of the first summons. I am of the opinion that this objection is not well founded and that the commitment of the prisoner is right. It has been decided in *Ex parte Johnson* (1863), 3 B. & S. 947 (see *ante*, p. 40), that an order

in bastardy is made when the judgment of the justices is orally pronounced in court, and that the formal written order is merely the record of the adjudication and may be drawn up afterwards and signed at any time, and that consequently the time for appeal against such order was from the oral adjudication in petty sessions and not from the time when the written order is signed or served. The applicant in this case had a right to have the order made in her favour correctly drawn up. The order first drawn up did not embody the terms of the order made, and, in fact, no such order as that first drawn up was ever really made by the justices, their signatures having been appended by mistake to a wrong order. It is an error, therefore, to allege that a second order was made. The only order made was the oral order of January 30th, and an incorrect record of that order having been delivered to the applicant of that order, I think she was entitled to apply to the same justices and to request that a correct record of the order should be delivered to her. This was all she did, and as there was in fact no second order made, it follows that no fresh summons and no fresh hearing was necessary. The case of *R. v. Brisby* (1849), 18 L. J. M. C. 157 (*ante*, p. 44), was cited as an authority that a new summons was required before a second order could be drawn up. In that case the point now raised was not involved, nor was there any opinion expressed on the subject. The second application in that case appears to have been made to other justices than those who heard the first, and, of course, if other justices are called upon to make an order there must be a fresh hearing before them. But here the same justices who heard the first application are called upon merely to draw up a correct record of their order. That case, however, is a distinct authority, for the proposition that where the order first drawn up is bad on the face of it, as in this case, and therefore a nullity, there is no occasion to have it quashed on appeal or *certiorari* before a second application to the other justices is made, nor was there any necessity in this case to tender the costs of the first summons: that course is required to be adopted only where the first hearing is admitted to be abortive, and that, therefore, the proceedings have to be commenced over again. Under such circumstances, the case of *R. v. Hinchcliff* (1847), 10 Q. B. D. 356 (*ante*, p. 18), decides that the justices are not bound to entertain the second application until the costs of the first have been paid or tendered and the defendant has thereby been replaced

in his original position. But in this present case, so far from the first adjudication being admitted to have been abortive, that is the only adjudication the applicant now seeks to enforce. What she asks is that a correct record of that adjudication should be drawn up, and she seeks for no fresh hearing or judgment, nor is the pursuer subjected to any fresh costs by reason of the mistake made in drawing up the record of the first order. It is clear, therefore, that no tender of costs is required in this case where the first and only adjudication was right and the applicant seeks to enforce that adjudication. The case of *Wilkins v. Hemsworth* (1838), 7 A. & E. 807 (*ante*, p. 45), may also be referred to. In that case the justices signed two orders intended to be duplicates, but by mistake the order served on the father ordered the mother instead of the father to pay one shilling and sixpence a week. Afterwards a correct copy of the order was drawn up and served on the father, and it was held that as there was but one order the service of an incorrect copy of it could not vitiate the order; but that a correct copy might afterwards be drawn up, served, and enforced. For these reasons I am of opinion the commitment of the prisoner was right, and this summons must, therefore, be dismissed (*per* QUAIN, J., *ibid.*).

An order, if limited in time by the justices, when once that time has expired, cannot be revived.

Justices made an order in bastardy directing the putative father to pay until the mother married, and the father accordingly made payments, some of which were made within a year from the birth. Afterwards the mother married, but her husband died, and thereupon on her application the justices made a second order on the putative father to pay:—*Held*, that the second order was invalid (*Williams v. Davies* (1882), 52 L. J. M. C. 87).

An order obtained in breach of good faith would probably be quashed on *certiorari*.

A defendant's solicitor wrote to the magistrates' clerk asking for a postponement from the 23rd, the day fixed by the summons, to the 27th, offering to pay all expenses thereby incurred. The magistrates' clerk agreed, and notice was given to the complainant. On the morning of the 23rd, the defendant's brother saw the chairman of the petty sessions and explained the circumstances to him. Yet.

after this they made the order. Rule *nisi* granted for a *certiorari* (*Ex parte Evans* (1872), 26 J. P. 759).

*Service of order.*—The order need not be personally served but service of a copy of the minute of the order may be left for the defendant at his last or usual place of abode.

The Bastardy Acts do not prescribe any mode of serving the order, but it is submitted that the opinion expressed above is correct for the following reasons :

The form given by 11 & 12 Vict. c. 43 (P. 2), for a warrant of commitment for disobedience to an order punishable by imprisonment, recites "that a copy of a minute of the order being duly served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode."

It is true that this form is not used in bastardy matters, but it is an analogous proceeding, and the forms prescribed by the Local Government Board (see Appendix), for the information of the mother on disobedience to an order and the warrant of apprehension for disobedience to an order, both recite that the "said . . . had due notice of the said order." It may be, therefore, assumed personal service is not necessary, "due notice" being only required, and when it is found that in an analogous proceeding under 11 & 12 Vict. c. 43, service "personally or by leaving the same at his last or most usual place of abode" is deemed sufficient, there seems to be but little doubt in the matter.

For forms of order, see Appendix, *post*, pp. 145, *et seq.*

(k) "SUM OF MONEY WEEKLY."—It is submitted that the justices cannot make an order for varying sums to be paid covering different periods of the child's life. See 63 J. P. 620.

(l) "EXPENSES INCIDENTAL TO THE BIRTH OF SUCH CHILD."—It is entirely within the discretion of the justices to give these incidental expenses.

(m) "SUCH COSTS AS MAY HAVE BEEN INCURRED IN THE OBTAINING OF SUCH ORDER."—"There is no power to order an unsuccessful applicant to pay costs to a successful defendant" (*per* Lord DENMAN, C.J., in *R. v. Machen* (1849), 18 L. J. M. C. 213).

(n) "WEEKLY SUM MAY, IF THE SAID JUSTICES THINK FIT, BE CALCULATED FROM THE BIRTH OF THE CHILD."—The date from which the weekly payments will commence may only be from the birth of the child in these two cases, viz. : (1) where the application is before the birth ; (2) or within two months afterwards. Under the present statutes there is no date fixed for the commencement of the weekly payments ; but it is contended that inasmuch as in the forms settled by the Local Government Board under s. 6 of 36 Vict. c. 9 (Bastardy Laws Amendment Act, 1873 ; see *post*, pp. 133, *et seq.*), the payments are directed to be made henceforth, *i.e.*, from the date of the order, it will be wiser in all cases, except in the two instances above mentioned, to order the payments to commence from the date of the order.

The following case was decided under the repealed s. 3 of 7 & 8 Vict. c. 101, which authorised the order to be made from the "time of making the application." As these words do not appear in the later enactments, it is contended that the case is no longer an authority in point.

A woman applied to justices in 1863 for a summons against B., as the father of her bastard child, born within two months. B. having absconded, he was not served ; but having returned in 1868, he was duly served, and upon the hearing the justices made an order, and directed that B. should pay the sum of 2s. 6d. per week from the date of the woman's application in 1863, amounting to the sum of £18 18s. :—*Held*, they were justified in so doing, and that the order was good (*R. v. Curme* (1868), 18 L. T. (N.S.) 559 ; 32 J. P. 404).

(o) "APPEAR TO ANY ONE JUSTICE."—For form of information, see Appendix, *post*, p. 154.

(p) "SUCH JUSTICE MAY, BY WARRANT."—A proceeding against the father of a bastard child is a civil and not a criminal process.

A police constable who makes an arrest under a warrant from a justice of the peace for disobedience to a bastardy order is bound to have the warrant in his possession, although the officer making the arrest was not asked to produce it (*Gothard v. Laxton* (1862), 2 B. & S. 363 ; 31 L. J. M. C. 123 ; 8 Jur. (N.S.) 642).

"As they were obviously police constables, we think they were not bound in the first instance to produce the warrant at the time

they made the arrest ; but as this was not a charge of felony, but rather in the nature of a civil than a criminal proceeding, the warrant ought to have been produced if required, and that an arrest without such production would not be legal" (*per* WIGHTMAN, J., *ibid.*).

No objection can be made if the magistrates issue a summons instead of a warrant if the defendant appears to it, though express authority is given by the statute to issue a warrant. But if the father neglects or refuses to appear the application cannot be heard in his absence, and a warrant must issue without reference to the summons. In cases where the dispute is as to the amount in arrear, the course of issuing a preliminary summons is often adopted as the most desirable course.

The warrant must not be executed on a Sunday, by virtue of 29 Car. 2, c. 7.

At the Luton County Court the plaintiff sued the defendants, two police constables, for £10 damages for illegal arrest. The plaintiff was apprehended on Sunday evening under a warrant for arrears due under a bastardy order. The county court judge, overruling a technical objection under 24 Geo. 2, c. 44, s. 6, decided that the statute 29 Car. 2, c. 7, applied, and gave a verdict for the plaintiff (*Hardwick v. Jacquest and Another* (1886), 30 Sol. J. 307).

(g) "SUCH PUTATIVE FATHER NEGLECT OR REFUSE TO MAKE PAYMENT OF THE SUMS DUE FROM HIM UNDER SUCH ORDER."—As to the enforcement of an order, it must be remembered that the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 35, applies to the backing of warrants, to warrants of distress, to levying sums ordered to be paid, and to the imprisonment of the defendant for non-payment, but does not extend to complaints, orders, or warrants in bastardy ; and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 54, applies to levying sums adjudged to be paid, and imprisonment of defendant for non-payment, in like manner as if the order were a conviction on information. The provisions of that statute must, therefore, be observed as to the scale of imprisonment for non-payment and as to the procedure on the execution of distress warrants.

*Enforcement after the marriage of the mother.*—Where the mother has obtained an order for the maintenance of a bastard child, it can

be enforced against the putative father after the marriage of the mother (*Sotheron v. Scott* (1881), 6 Q. B. D. 518 ; 50 L. J. M. C. 56 ; 44 L. T. 523 ; 45 J. P. 423).

An order obtained by a single woman for the maintenance of a bastard child can be enforced against the putative father after the marriage of the mother, although her husband is able to maintain the child (*Hardy v. Atherton* (1881), 7 Q. B. D. 264 ; 50 L. J. M. C. 105 ; 44 L. T. 776 ; 45 J. P. 683 ; 29 W. R. 788).

There is no direct authority whether the order can be enforced by a woman who has married the putative father, and subsequently been deserted by him, but it is submitted that the order is still enforceable, and has not been merged or exhausted by the subsequent marriage of the parents. See 60 J. P. 528.

But these two cases do not deal with the point as to whether the justices have a discretion to enforce the order against the putative father after the mother has married a man able to support the child. In *Sotheron v. Scott*, *ante*, MANISTY, J., said : "The only question is whether the order was revoked by the marriage of the mother, and as the law stands under 35 & 36 Vict. c. 65, I think it was not." In *Hardy v. Atherton*, *ante*, the question was whether the order could be legally enforced against the respondent during such period as the appellant resided with her husband, and he was liable to maintain the child. The ability of the husband to maintain the child was admitted. HUDDLESTON, B., thought the justices had no discretion, but must enforce the order ; but HAWKINS, J., merely held that the order was still in force, though HUDDLESTON, B., in his judgment in a later case, *Davies v. Evans*, *post*, states that he (HAWKINS, J.) concurred with him in his view that there was no discretion.

The question as to the discretion of the justices, and the word "may" in this section, was distinctly put in issue in the following case, and the learned judges differed :

The case stated that an order had been made against the respondent, the putative father, for the payment of 2s. 6d. a week to the appellant. It was admitted that the payment was £7 in arrear, and the appellant since the order had become the wife of John Davies, and was still living with him, and that he was able to maintain the child. The justices on the amended case submitted for the further opinion of the court the following question : Whether

the justices were bound to enforce the order against the putative father of the bastard child by warrant of distress or committal, or whether they had any discretion in the matter :—*Held*, by HUDDLESTON, B., that the justices were bound to enforce it. “‘May’ should read ‘must.’ Numerous authorities show this may be done under some circumstances. See *Bell v. Crane* (1873), L. R. 8 Q. B. 481 ; *R. v. Barclay* (1881), 8 Q. B. D. 306 ; *R. v. Boteler* (1863), 4 B. & S. 959, and other cases, and when the effect is to carry out the object of the statute, it is reasonable to read the word ‘may’ as ‘must.’ What is the object of this statute? Clearly the mother is to be relieved of the support of the child to the extent specified in the Act. She is to have the money paid to her while alive, and of sound mind and out of prison. She is to have it although she marries another man, and whether the husband is able to support the child or not (*Sotheron v. Scott* ; *Hardy v. Atherton*, *ante*). Then how is the money to be recovered? It is idle to say she is to bring action after action in the county court for each weekly sum due and unpaid. The legislature intended there should be a summary power of enforcing payment by distress and imprisonment. If so, there is no difficulty in reading the word ‘may’ as ‘must,’ and rendering the whole Act effective. I think the justices have no discretion to refuse to enforce payment under the order. Were it otherwise, great hardship would follow. There is an appeal from the order to quarter sessions, where the whole matter may be re-opened ; but if the power given to the justices to enforce the order were discretionary, there would be practically a re-hearing on every occasion when the mother asks them to enforce the order.” GROVE, J., took the opposite view : “I think that they (*i.e.*, the justices) ought to make further inquiry, not merely whether the husband was able to maintain the child, but whether he was willing to support the child and adopt it, and also as to the conduct of the wife and many other facts. In numerous cases the enforcement of the order might be productive of great hardship. Suppose the order were wrongly made, and the putative father were not the real father of the child, and the mother were an abandoned woman, yet the order would stand. Are the justices in such a case, although the mother has a husband able and ready to support the child, and although if all the facts had been before them they would have made a different order, bound for thirteen years to enforce the order? I think they are

not." The general canon of construction of statutes is stated in *R. v. Barclay* (1881), 8 Q. B. D. 306, by FIELD, J., who says: "It is a very well-established rule for the construction of statutes that if they impose a charge on the subject they must be strictly construed against the party in whose favour the charge is imposed. So applying the canon to s. 4 of this Act, it seems clear to me that the word 'may' must not be construed 'shall.' When a statute declares something 'shall' be done, the language is considered imperative; where the word 'may' is used the language, as a general rule, is permissive. No doubt in many cases the phrase 'shall and may be lawful' has been construed as imperative by the courts, having regard to the object of the provision and to the context and the rule above mentioned. . . . The framer of the Act knew what words to use which he intended to be imperative. So, in s. 4 the justices 'shall' hear the evidence of the woman, and 'shall' hear any evidence tendered by the alleged father—the language thus far is clearly imperative—and they 'may' adjudge the man to be the putative father of such bastard child. The word 'may,' which is used about half-a-dozen times, is to be permissive in five cases and imperative in only one. I can see no reason for such construction. I think it would be dangerous to put on the same word, occurring frequently in the same section, different constructions in order to carry out the supposed intention of the legislature, not ascertained from the language of the enactment, but inferred from ideas of expediency. Even if I were to look beyond the language of the enactment, I should think the justices ought to have a discretion as to the enforcement of the order. It is highly desirable they should have it. I do not think I am at liberty to look beyond the words of the section, which are grammatical, and in their ordinary meaning are discretionary. It may be that on the facts before them the justices ought to enforce the order. But the question put to us is whether they have a discretion to do so or not. I think they have" (*Davies v. Evans* (1882), 9 Q. B. D. 238; 51 L. J. M. C. 132; 46 L. T. 418; 46 J. P. 471). On this subject, see also 60 J. P. 317; 64 J. P. 721, art.

*Order partly good.*—In the case of an order which is partly good and partly bad, that part which is good may be enforced, provided that it can be clearly distinguished from and is in no way dependent upon the part that is bad.

An order of maintenance ordered a person as putative father to pay a weekly sum for the maintenance of a bastard child from the birth of the child. As the application for the order was not made until more than two months after the birth, the order was clearly bad as to the period between the date of the birth and the time of applying for the order. Notice of abandonment of all claim under the order for payment anterior to the date of the order, had been served on the putative father :—*Held*, that the order was valid, and might be enforced against the putative father in respect of the weekly payments which became due after the date of the application to the magistrates (*R. v. Green and Others* (1851), 20 L. J. M. C. 168 ; *sub nom. Ex parte Colley*, 16 L. T. 319).

“ It seems to me that the doctrine is established by the three cases which have been cited (*R. v. Maulden* (1828), 8 B. & C. 78 ; 4 L. J. M. C. 97 ; *R. v. St. Nicholas, Leicester* (1835), 6 Q. B. 158 ; 13 L. J. M. C. 151 ; and *R. v. Winster* (1850), 19 L. J. M. C. 185), that this court, exercising its appellate jurisdiction, can clearly sever the bad part of an order from the good, quash the order for the bad part, and leave it to stand as to the residue. The case of *R. v. Stoke Bliss* (1844), 6 Q. B. 158, which at first sight appears to be against the rule that the order may be good in part and bad in part, in reality confirms it. The order in that case, which was bad as to the judgment, was held not maintainable as to the costs, but was quashed as bad altogether on the ground that the giving of costs was merely ancillary to the judgment, and that the two parts of the order could not be clearly severed. But the very distinction which the court points out in that case is an adjudication that the principle is a true one, and that where the line of demarcation can be clearly pointed out (as it is in this case), the order may be supported as to the good part. I do not think it was necessary for the woman, who gave notice that she had abandoned all claim under the bad part of the order, to have it brought up by *certiorari* for the purpose of having it quashed as to that part, and I am of opinion that I am warranted by the decisions referred to in making this rule absolute ” (*per ERLE, J., ibid.* See also *R. v. Peek* (1869), 20 L. T. 393).

As to the enforcement of an order after the death of the mother, or while she is of unsound mind or confined in any gaol or prison, see 7 & 8 Vict. c. 101, s. 5, *post*, p. 86 ; and if the child should

become chargeable while the mother is so incapacitated, see 7 & 8 Vict. c. 101, s. 7, *post*, p. 90.

There is no stay of execution pending appeal. See *Kendall v. Wilkinson* (1855), 4 E. & B. 680 ; 24 L. J. M. C. 89, *post*, p. 82.

*Agreement to release appellant.*—An agreement after the order has been made by the justices to release the putative father from all sums due and payable under it is no bar to the enforcement of the order by the justices.

An order had been obtained by the respondent, ordering the appellant to contribute to the support of her bastard child. Subsequently to the making of the order, the respondent, in consideration of a sum of money, agreed to release and indemnify the appellant for ever from all actions, suits, and proceedings in respect of the child :—*Held*, this agreement was no bar to the jurisdiction of the justices to enforce the order on the application of the mother (*Griffith v. Evans* (1882), 30 W. R. 427 ; 46 L. T. 417).

*Bankruptcy of the putative father.*—By the Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 3 (12), “a composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under . . . an affiliation order . . . except to such an extent and under such conditions as the court expressly orders in respect of such liability.”

The bankruptcy, therefore, is no answer to a proceeding against the putative father for arrears of alimony.

After the death of the father, no proceedings can be taken with respect to the order or for arrears due under it. Sol. J. 1897, p. 87.

(r) “RECOVERED BY DISTRESS.”—For Form of Warrant of Distress, see Appendix, *post*, p. 156, and note to 36 Vict. c. 9, s. 6, *post*, p. 70.

The authority to a constable to receive the amount, and discharge the defendant under r. 27 of the Summary Jurisdiction Rules, 1886, does not apply to a warrant in bastardy.

(s) "RECOGNISANCE."—For form of recognisance for appearance at the return of the distress warrant, see Appendix, *post*, p. 158, and note to 36 Vict. c. 9, s. 6, *post*, p. 69.

(t) "WARRANT."—For form of warrant of commitment, see Appendix, *post*, p. 159, and note to 36 Vict. c. 9, s. 6, *post*, p. 70.

(u) "SUCH PUTATIVE FATHER TO BE COMMITTED."—Persons committed are to be treated as ordinary prisoners and not as debtors. See letter from the Home Secretary in 46 J. P. 122.

Section 54 of the Summary Jurisdiction Act, 1879, applies the provisions of that Act to the imprisonment of a defendant for non-payment under a bastardy order in like manner as if the order were a conviction on information. It follows, therefore, that imprisonment for non-payment of arrears discharges the defendant from all liability in respect of the sums for which he has been imprisoned. See judgment of ABBOTT, C.J., in *Robson v. Spearman* (1820), 3 B. & Ald. 493.

(v) "TERM NOT EXCEEDING THREE CALENDAR MONTHS."—The Summary Jurisdiction Acts are to apply to the levying of sums adjudged to be paid by an order, and to the imprisonment for non-payment in like manner as on a conviction. But it would appear that the costs of enforcing the order are not part of the sum adjudged to be paid within s. 5 of the Summary Jurisdiction Act, 1879. The Summary Jurisdiction Acts are made applicable by ss. 47 and 54 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), to the imprisonment for non-payment of sums adjudged to be paid by an order. But when a defendant is committed for non-payment of arrears no order is made, and it would appear, therefore, that the scale of imprisonment is limited to the sum due under the order without the additional costs.

5. *Time of cessation of order.*] No order for the maintenance and education or for contribution towards the relief of any such child made in pursuance of this Act shall, except for the purpose of recovering money pre-

viously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years, or after the death of such child ; provided that the justices may in the order direct that the payments to be made under it in respect of the child shall continue until the child attains the age of sixteen years, in which case such order shall be in force until that period.

Justices have a discretion to lessen the period during which the payments have to be made. When the limit of time fixed by the order has been reached the matter is *res judicata* and no fresh order can be made.

The justices have a discretion under 35 & 36 Vict. c. 65, to order weekly payments for the maintenance of a bastard child for a less period than the maximum period given by s. 5 of the Act, and, consequently, where the justices made an order for weekly payments until the child attained the age of sixteen, or the mother married, such order was held not to be in force after the marriage of the mother (*Pearson v. Heys* (1881), 7 Q. B. D. 260 ; 50 L. J. M. C. 124 ; 45 L. T. 683 ; 45 J. P. 730 ; 30 W. R. 156).

Upon the hearing of an affiliation summons, the justices made an order under 35 & 36 Vict. c. 65, for the payment of a weekly sum until the child should attain the age of thirteen, or die, or the mother should marry. The mother married and her husband died before the child attained the age of thirteen. The mother took out a fresh summons upon which the justices made an order for payment of a weekly allowance :—*Held* (HAWKINS, J., doubting), that the matter was *res judicata*, and the second order was bad (*Williams v. Davies* (1883), 11 Q. B. D. 74 ; 52 L. J. M. C. 87 ; 47 J. P. 581).

6. *Proof of service of summons in certain cases.*] In cases where the putative father of any bastard child resides out of the petty sessional district where the mother applies for a summons or order of maintenance, it shall be lawful to prove by affidavit in the form referred to in the Second

*Schedule to this Act, or to the like effect, that such summons or order has been duly served.*

This section and the schedule mentioned therein has been repealed by s. 2 of the Bastardy Laws Amendment Act, 1873 (36 Vict. c. 9), and the proof of the service of summons in certain cases is now regulated by s. 4 of that Act and the schedule thereto; see *post*, p. 63.

**7. *Payments for bastard children.***] When and so often as any bastard child for whose maintenance an order has been made by justices on the application of the mother shall become chargeable to any parish or union, any two justices having jurisdiction in the parish or union in petty sessions may, if they shall see fit, by order under their hands and seals, from time to time appoint some relieving or other officer of the parish or union to which such bastard child shall be so chargeable to receive on account of such parish or union such proportion of the payments then due or becoming due under the said order as may accrue during the period for which such child is chargeable, and such appointment shall remain in force for the period of one whole year whenever the bastard child shall be or have become chargeable as aforesaid, and may afterwards from time to time be renewed by endorsement under the hand of any one justice for the like period; and any payment so ordered to be made shall be recoverable by the relieving officer or other officer appointed to receive it in the manner provided for the recovery of payments under an order obtained by the mother.

This section practically repeals the provisions of 31 & 32 Vict. c. 122, s. 41.

It enables the guardians to apply where the mother has already obtained an order. In cases where no order has been obtained by the mother, the remedy for the guardians is provided in 36 Vict. c. 9, s. 5, *post*, p. 63.

A point may arise as to the enforcement of an order obtained by a woman who has since married a man who is able to maintain the

child, and the guardians have obtained an order under this section. It is clear that the order does not abate on the marriage of the mother (see *Sotheron v. Scott*, and *Hardy v. Atherton*, *ante*, p. 51), but it is still an undecided question (see *Davies v. Evans*, *ante*, p. 52), whether the justices have a discretion as to whether they shall enforce the order or not. The point is discussed in the note to 35 & 36 Vict. c. 65, s. 4, *ante*, pp. 51 *et seq.*

As to the recovery of payments due under this section, see *ante*, p. 55.

**8.** *Guardians may recover costs of relief of bastard child in certain cases.] When a bastard child becomes chargeable to a union or parish, the guardians may apply to two justices having jurisdiction in the union or parish, in petty sessions, and thereupon such justices may summon the man alleged to be the father of the child to appear before any two justices having the like jurisdiction, to show cause why an order should not be made upon him to contribute towards the relief of the child, and upon his appearance, or, in the event of his not appearing, upon proof of due service of the summons upon him, such justices may, if satisfied that he is the father of the child, upon such evidence as is by this Act required in the case of a summons issued upon the application of the mother, make an order upon such putative father to pay to the guardians or one of their officers such sum, weekly or otherwise, towards the relief of the child during such time as the child shall continue or afterwards be chargeable, as shall appear to them to be proper; and such order shall, if the payments required by it to be made be in arrear, be enforced in the manner prescribed by the Act of the eleventh and twelfth Victoria, chapter forty-three, for the enforcing of orders of justices requiring the payment of a sum of money: Provided as follows:*

1. *That no payments shall be recoverable under such order except in respect of the time during which the child is actually in receipt of relief:*

2. *That an order under this section shall not be made, and, if made, shall cease, except for the recovery of arrears when the mother of the child has obtained an order under this Act :*
3. *That nothing in this section shall be deemed to relieve the mother of a bastard child from her liability to maintain such child :*
4. *That any person upon whom an order is made under this section shall have the same right of appeal against such order as in the case of an order obtained on the application of the mother :*
5. *That if after an order has been made under this section the mother should apply for an order under this Act, the order made under this section shall be primâ facie evidence that the man upon whom the order is made is the father of the child.*

This section has been repealed by s. 2 of the Bastardy Laws Amendment Act, 1873 (36 Vict. c. 9), and s. 5 of that Act substituted for it, *post*, p. 62.

**9. Appeals.]** The court of quarter sessions, on appeal to them against any order made pursuant to the provisions of this Act, may, if they think fit, reduce the amount directed to be paid for the maintenance and education or on account of the relief of the child named in such order, and they shall thereupon alter the order accordingly.

The court of quarter sessions have only discretion to reduce the amount to be paid for the maintenance, education, or relief of the child, and, therefore, have no power to modify the decision of the justices, as to the amount ordered to be paid by the justices for the incidental expenses of the birth of the child, or of its funeral expenses.

As to the general proceedings on appeal, see note to s. 4 of 7 & 8 Vict. c. 101, *post*, p. 74.

**10.** *Act incorporated with recited Act.*] This Act shall be deemed to be incorporated with the said recited Act, and shall be construed as if the said recited Act (except such parts thereof as have been repealed or amended by this Act) and this Act were one Act.

**11.** *Extent of Act.*] This Act shall not extend to Scotland or Ireland.

As to the enforcement of bastardy orders in Scotland and Ireland, see *post*, p. 122.

## SCHEDULES referred to in the foregoing Act.

### FIRST SCHEDULE.

7 & 8 Vict. c. 101, an Act for the further Amendment of the Laws relating to the Poor in England—extent of repeal, sections 2 and 3 ; section 5 from “ Provided always,” to end of section ; and section 7, to “ Provided always.”

31 & 32 Vict. c. 122, an Act to make further Amendments in the Laws for the relief of the Poor in England and Wales—extent of repeal, section 41.

### SECOND SCHEDULE.

#### *Affidavit of Service.*

I, *A. B.*, one of the officers of the constabulary of the county of \_\_\_\_\_, make oath and say, that I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, duly serve the defendant with a summons [*or order*], a true copy whereof is herewith annexed, marked *A.*, by delivering the same personally to the defendant [*or by leaving the same with* \_\_\_\_\_ at the place of abode of the defendant].

[I endorse the copy summons (*or order*) thus \_\_\_\_\_. This paper, marked *A.*, is the paper referred to in the annexed affidavit.]

Sworn at \_\_\_\_\_, in the county of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, before me,

*J. B.*,

Justice of Peace for the said county.

THE BASTARDY LAWS AMENDMENT ACT,  
1873.

(36 VICT. c. 9.)

*An Act to amend the Bastardy Laws.*

[24th April 1873.]

WHEREAS an Act was passed in the thirty-fifth and thirty-sixth years of the reign of Her Majesty, chapter sixty-five, intituled "The Bastardy Laws Amendment Act, 1872":

And whereas it is expedient to amend the said recited Act:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Short title.*] This Act may be cited as "The Bastardy Laws Amendment Act, 1873."

2. *Repeal of sections 6 and 8 of recited Act and second schedule thereto.*] The sixth and eighth sections of the said recited Act and the Second Schedule thereto are hereby repealed, except as to anything heretofore duly done thereunder, and except so far as may be necessary for the purpose of supporting and continuing any proceeding taken before the passing of this Act.

Sections 4 and 5 of this Act, *post*, pp. 63, 64, are substituted for the sections repealed by this section.

3. *Revival of rights under repealed enactments.*] Any woman delivered of a bastard child on or before the tenth

*day of August, one thousand eight hundred and seventy-two, who, but for the repeal by the said recited Act of the enactments specified in the First Schedule hereto would have been entitled to apply for a summons against the putative father of such child, shall be entitled to apply for such summons as follows :*

*In any case in which she would have been entitled to apply at any time within twelve months from the birth of the child, she shall be entitled to apply at any time within six months next after the passing of this Act ;*

*And in any case in which she would have been entitled to apply at any time after twelve months from the birth of the child, upon proof that the man alleged to be the father of the child had within the twelve months next after the birth of the child paid money for its maintenance, she shall be entitled to apply at any time after the passing of this Act upon the like proof ;*

*And upon any such application the same proceedings shall or may be taken, and the same consequences, including all rights of appeal, shall or may ensue, as should or might have been taken or have ensued if the said enactments had not been repealed by the said recited Act.*

The provisions of this section are now, owing to the lapse of time, of no further practical use, and have been repealed by 46 & 47 Vict. c. 39 (S. L. R.).

**4. Proof of service of summons in certain cases.]** In cases where the putative father of any bastard child resides out of the petty sessional district where the mother applies for a summons or order of maintenance, it shall be lawful to prove by affidavit in the form referred to in the Second Schedule to this Act, or to the like effect,

that such summons or order has been duly served. Any affidavit purporting to be so made and attested shall be received in evidence, and shall be deemed to be duly made and attested until the contrary be shown.

This section is substituted for s. 6 of 35 & 36 Vict. c. 65, repealed by s. 2 of this Act. The difference between the two sections lies in the addition of the proviso that such affidavit shall be received in evidence and deemed to be duly made and attested until the contrary is shown.

As to the method of service in ordinary cases, see *ante*, p. 48.

**5.** *Guardians may recover cost of relief of bastard child in certain cases.*] When a bastard child becomes chargeable to a union or parish (*a*), the guardians may apply (*b*) to two justices (*c*) having jurisdiction in the union or parish, in petty sessions (*d*), and thereupon such justices may summon (*e*) the man alleged to be the father of the child to appear before any two justices having the like jurisdiction, to show cause why an order should not be made upon him to contribute towards the relief of the child, and upon his appearance, or on proof that the summons was duly served (*f*) on him, or left at his last place of abode, six days at least before the petty sessions, the justices in such petty session shall hear the evidence of the mother (*g*), and such other evidence as she or the said guardians may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father, and if the evidence of the mother be corroborated in some material particular by other evidence to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child, and they may proceed to make an order (*h*) upon such putative father to pay to the guardians or one of their officers such sum, <sup>s</sup> weekly or otherwise,

towards the relief of the child during such time as the child shall continue or afterwards be chargeable, as shall appear to them to be proper; and any payment so ordered to be made shall be recoverable (*i*) by the relieving officer, or other officer appointed to receive it, in the manner provided by the said recited Act for the recovery of payments under an order obtained by the mother: Provided as follows:

1. That no payments shall be recoverable under such order except in respect of the time during which the child is actually in receipt of relief;
2. That an order under this section shall not be made, and if made shall cease except for the recovery of arrears, when the mother of the child has obtained an order under the said recited Act or this Act (*k*);
3. That nothing in this section shall be deemed to relieve the mother of a bastard child from her liability to maintain such child (*l*);
4. That any person upon whom an order is made under this section shall have the same right of appeal against such order as in the case of an order obtained on the application of the mother (*m*);
5. That if after an order has been made under this section the mother should apply for an order under the said recited Act or this Act, the order made under this section shall be *prima facie* evidence that the man upon whom the order is made is the father of the child.

(a) "CHARGEABLE TO A UNION OR PARISH."—This would, it is submitted, cover the case of a child sent to an industrial school, and towards whose maintenance the guardians contribute. See 65 J. P. 781. A child can become chargeable to a parish within the

meaning of this section although the mother has married a man who is able to maintain the child (*Plymouth Guardians v. Gibbs*, *post*, p. 67).

(b) "GUARDIANS MAY APPLY."—An application under this section cannot be made where the mother has already obtained an order. In such cases the proper course for the guardians is to apply under s. 7 of 35 & 36 Vict. c. 65, *ante*, p. 58.

There is no restriction of time within which the guardians must apply, but the application may be made at any time provided the child has become chargeable and is under the age of thirteen.

No order can be made if the mother is dead. See *R. v. Armitage*, *ante*, p. 31.

As to the form of application, see Local Government Order, *post*, Appendix, p. 162.

The mother is not precluded from applying by the guardians having previously applied for an order and not succeeded (*R. v. Walker*, *ante*, p. 17). Payment to the guardians under an order obtained under this section is not such a payment as will give the justices jurisdiction to make an order under 35 & 36 Vict. c. 65, s. 3, upon the application of the mother more than twelve months after the birth. See *Billington v. Cyphes*, *ante*, p. 11.

(c) "TWO JUSTICES."—The application has to be made by the guardians to two justices, while an application by the mother need only be made to one justice having jurisdiction in the petty sessional district where she resides (35 & 36 Vict. c. 65, s. 3, *ante*, p. 2).

(d) "PETTY SESSIONS."—For a definition of this, see 12 Vict. c. 18, s. 1, *ante*, p. 31.

(e) "MAY SUMMON."—As to the form of summons, see Appendix, *post*, p. 163.

(f) "PROOF THAT SUMMONS WAS DULY SERVED."—As to the proof of the service of the summons, see *ante*, p. 63.

(g) "EVIDENCE OF THE MOTHER."—As to this and the corroboration required, see *ante*, p. 35.

(h) "MAKE AN ORDER."—It was doubtful whether an order could be made under this section when the woman, not having obtained an order, is married, and living with a husband able to maintain the child.

By 4 & 5 Will. 4, c. 76, s. 57, a man is liable to maintain the illegitimate children of his wife born before marriage while under sixteen years of age, and it might appear, therefore, that he is the person to whom the guardians should look to, in the first instance, to pay for the support of the child.

Under the old law, where an order of affiliation was made before 4 & 5 Will. 4, c. 76, and after that Act had passed, the woman had married a man able to maintain the child:—*Held*, that the order was thereupon suspended, at least while the husband was of such ability; and, *semble*, that it was suspended so long as according to s. 57 the husband was liable to maintain the child, whether able or not (*Lang v. Spicer* (1836), 5 L. J. M. C. 60).

But now it is decided that where an illegitimate child is being maintained by the guardians of a union or parish, justices have jurisdiction to make an affiliation order against the putative father of the child under s. 5 of the Bastardy Laws Amendment Act, 1873, notwithstanding that the child's mother has married and her husband is able to maintain it.

On December 16th, 1898, a woman was delivered of a bastard child of which the respondent was the father. On April 5th, 1901, the woman married another man residing in the same town. Three months after their marriage the husband left his wife, their home was broken up, and the child was left with the woman's mother, who was unable to maintain it, and on July 16th, 1901, the child was taken to the workhouse and there maintained by the appellants, and was still so being maintained at the time of the hearing. The husband was of sufficient ability to maintain the child. At the time of the hearing he had resumed cohabitation with his wife, but he refused to take the child out of the workhouse and maintain it:—*Held*, that the justices, on the application of the guardians, had jurisdiction to make an order under s. 5 of the Bastardy Laws Amendment Act, 1873, against the putative father (*Plymouth Guardians v. Gibbs*, [1903] 1 K. B. 177; 72 L. J. K. B. 33; 87 L. T. 685; 67 J. P. 61; 51 W. R. 157). "If the child becomes chargeable

within the meaning of s. 5, the justices may summon the man alleged to be the father of the child to appear and show cause why an order should not be made upon him, and having heard the evidence of the mother, corroborated as the section provides, and of others, they may—I do not say they must—make an order against the putative father. . . . I therefore come to the conclusion that the justices may, upon the application of the guardians, make an order against the putative father, notwithstanding it be shown that the husband of the illegitimate child's mother has means to maintain it, though the justices may take that fact into their consideration. The difficulty suggested as to the dual liability has been discussed in several cases, but it was decided in *Hardy v. Atherton*, ante, p. 51, that an order against the putative father obtained by the mother could be enforced, notwithstanding that she had since married and her husband had means to support the illegitimate child. The argument that a dual liability may exist applies with equal force to the present case where the application for an order against the putative father is made by the guardians. I think that *Lang v. Spicer*, ante, was rightly decided as the law then stood. The decision was that there being a person, the woman's husband, liable by statute to maintain the child, the putative father could not be made liable upon an affiliation order obtained for the relief of the parish, at any rate so long as the husband was able to maintain the child. It was held that either expressly or by implication the provisions of 18 Eliz. c 3, had been repealed; but in 1872 and 1873 there was a re-enactment of the legislation which had been so repealed, and s. 5 of the Act of 1873 giving the guardians specific power to obtain an order against the putative father was passed with knowledge of the previous legislation, and of the decision in *Lang v. Spicer*" (per Lord ALVERSTONE, C.J., *ibid.*).

As to the form of the Order, see Appendix, *post*, p. 166.

Costs may be awarded to or against the parties on application under this section. 39 & 40 Vict. c. 61, s. 24, enacts: "In any proceeding by the guardians of the poor under 36 Vict. c. 9, for obtaining an order upon the putative father of a bastard child, it shall be competent for the justices making the order to award costs to and against the parties in like manner and to the like effect,

as in the case of orders for the payment of money made under 11 & 12 Vict. c. 43."

(i) "PAYMENT SO ORDERED TO BE MADE SHALL BE RECOVERABLE."—As to the recovery of payments, see 35 & 36 Vict. c. 65, s. 4, *ante*, p. 50.

As to the forms under process of recovery, see Appendix, *post*, pp. 168—176, and note to 36 & 37 Vict. c. 9, s. 6, *post*, p. 70.

(k) "ORDER UNDER THE SAID ACT OR RECITED ACT."—If the child becomes chargeable to any parish or union after the mother has obtained an order, the guardians have power to apply under 35 & 36 Vict. c. 65, s. 7, *ante*, p. 58.

(l) "LIABILITY TO MAINTAIN SUCH CHILD."—The liability of the mother of a bastard child to maintain such child is provided for by 4 & 5 Will. 4, c. 76, s. 71, which enacts: "Such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family until such child shall attain the age of sixteen . . . provided always, that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female."

(m) "ON THE APPLICATION OF THE MOTHER."—As to the right and method of appeal, see 7 & 8 Vict. c. 101, s. 4, *post*, p. 76.

As to the form of recognizance on notice of appeal under this section, see Appendix, *post*, p. 153.

**6. Issue of new or altered forms of proceedings.]** The Local Government Board may issue such new or altered forms of proceedings in matters of bastardy as they shall deem necessary or expedient for giving effect to the provisions of the said recited Act and of this Act.

For the orders issued by the Local Government Board under this section, see *post*, pp. 133 *et seq.*

Orders in bastardy should follow the forms so issued, or else the order may be invalid for the omission of a material statement, and the Bastardy Orders Act, 1880 (43 & 44 Vict. c. 32), only cures such

defects in orders prior to the passing of the Act. See *ante*, p. 40, and Appendix, p. 133.

There is, however, another question to be considered. The Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), applies to complaints, order, or warrants in matters of bastardy made against the putative father of any bastard child, the provisions of the Act relating to any backing of warrants for compelling the appearance of such putative father, or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for non-payment of the same; and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 54, enacts: "This Act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for non-payment of such sums, in like manner as if an order in any such matter or so enforceable were a conviction on information, and shall apply to the proof of the service of any summons, notice, process, or document in any matter of bastardy, and of any handwriting or seal in any such matter, and to an appeal from an order in any matter of bastardy."

It would, therefore, appear that such of the forms prescribed in the foregoing orders as relate to proceedings subsequent to the order of affiliation are superseded by the forms prescribed under the Summary Jurisdiction Rules of 1886. But, as a matter of practice, the forms prescribed by the Local Government Board are still used, and no objection has been raised.

Moreover, the forms prescribed by the Summary Jurisdiction Rules of 1886 (which are published by Messrs. Shaw & Sons), require the recital of the order, the forms of such recital being found in the forms issued by the Local Government Board; the retention of the forms of such order will be necessary as a guide to what has to be inserted in the forms issued under the Summary Jurisdiction Rules of 1886.

7. *Adjournment of proceedings where two justices not present.*] If at the time appointed for the hearing of any case in and by any summons issued under the said recited Act or this Act two justices having jurisdiction to hear

the same shall not be present, it shall be lawful for any one justice then present to adjourn the hearing to a certain time and place to be then appointed in the presence of the party or parties or their respective counsel, attorneys, or agents then present ; and in the meantime the said justice may suffer the defendant to go at large upon his entering into a recognizance with or without surety or sureties, at the discretion of the said justice, conditioned for his appearance at the time and place to which such hearing shall be adjourned.

This gives the power of adjournment to one justice if two justices are not present. As to the general power to justices to adjourn the hearing, see 7 & 8 Vict. c. 101, s. 4, *post*, p. 74.

As to the forms of recognizance and notices under this section, see Appendix, *post*, p. 144.

*8. Orders made by justices before passing of this Act valid.] All orders made by any justices of the peace before the passing of this Act upon the putative father of any bastard child born before the tenth day of August, one thousand eight hundred and seventy-two, for any payment to be made by such putative father in respect of such child, which would have been valid if the Bastardy Laws Amendment Act, 1872, had not passed, and which shall not have been appealed against before the passing of this Act, shall be, and be deemed to have been, valid and effectual in law, to all intents and purposes whatsoever.*

The provisions of this section are of no practical use owing to the lapse of time, and have been repealed by 46 & 47 Vict. c. 39 (S. L. R.).

*9. This and recited Act to be construed as one Act.] This Act shall be deemed to be incorporated with the said*

recited Act, and shall be construed as if the said recited Act (except such parts thereof as have been repealed or amended by this Act) and this Act were one Act.

**10.** *Not to extend to Scotland or Ireland.*] This Act shall not extend to Scotland or Ireland.

As to the enforcement of orders in bastardy in Scotland and Ireland, see *post*, p. 122.

## SCHEDULES referred to in the foregoing Act.

### FIRST SCHEDULE.

7 & 8 Vict. c. 101, an Act for the further Amendment of the Laws relating to the Poor in England—extent of repeal, ss. 2 and 3; s. 5 from “Provided always,” to end of section; and s. 7 to “Provided always.”

### SECOND SCHEDULE.

#### *Affidavit of Service.*

I, *A. B.*, one of the officers of the constabulary of the county of \_\_\_\_\_, make oath and say, that I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, duly serve the defendant with a summons [*or order*], a true copy whereof is herewith annexed, marked A., by delivering the same personally to the defendant [*or by leaving the same with* \_\_\_\_\_] at the place of abode of the defendant].

[I endorse a copy summons [*or order*] thus \_\_\_\_\_. This paper, marked A., is the paper referred to in the annexed affidavit.]

Sworn at \_\_\_\_\_, in the county of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me,

*J. B.*,

Justice of the peace for the said county.

THE POOR LAW AMENDMENT ACT, 1844.

(7 & 8 VICT. c. 101.)

*An Act for the further Amendment of the Laws relating to the Poor in England.* [9th August 1844.]

WHEREAS it is expedient to amend an Act passed in the session held in the fourth and fifth years of the reign of his late Majesty King William the Fourth, intituled An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales, and certain other Acts relating to the relief of the poor in England: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act all powers for obtaining or making an order upon any putative father for the maintenance of a bastard child shall cease and determine, except as hereinafter provided.

**2.** *The putative father to be summoned to petty sessions, on application of mother of bastard.*

This section has been repealed by the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65, s. 2), and re-enacted by s. 3 of that Act, *ante*, p. 2.

**3.** *Justices in petty session may make an order on the putative father for maintenance.*

This section has been repealed by the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65, s. 2), and re-enacted, with certain alterations, by s. 3 of that Act, *ante*, p. 2.

**4.** *Applications to sessions to be made within forty days after service of summons on putative father.—Appeal to quarter sessions by putative father.*] The justices in petty sessions as aforesaid may adjourn the hearing (a) of the case as often as to them may seem fit; but no such order shall be made unless applied for at such petty sessions within the space of forty days (b) from the service of the summons after the birth of the bastard child on the person alleged to be the father of such bastard child; and [*and if within twenty-four hours after the adjudication and making of any order on the putative father as aforesaid such putative father give notice of appeal to the mother of the bastard child, and also within seven days give sufficient security, by recognizance or otherwise, for the payment of costs, to the satisfaction of some one justice of the peace*], it shall be lawful for such putative father to appeal (c) to the general quarter sessions of the peace [*to be holden after the period of fourteen days next after the making of the said order for the county, city, borough, or place for which such petty session may have been held; and the justices in such quarter sessions assembled, or the recorder, as the case may be, shall thereupon hear and determine such appeal, and shall order such costs to be paid by either party as to them or him may seem fit*].

The words in italics of this section have been repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), being replaced by ss. 31, 54 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), as amended by s. 6 of the Summary Jurisdiction Act of 1884 (47 & 48 Vict. c. 43).

(a) “MAY ADJOURN THE HEARING.”—This section gives the justices power to adjourn the proceedings as often as may seem fit to them. If two justices are not present, any one justice may adjourn the hearing to a certain time and place in the presence of the parties

or their solicitors or agents then present, and may in the meantime suffer the defendant to go at large upon his entering into a recognizance, with or without surety or sureties, at the discretion of the justice, conditioned for his appearance at such adjourned hearing. Cf. 36 Vict. c. 9, s. 7, *ante*, p. 71.

In the case of application before the birth the order may be made within two calendar months after the birth (8 Vict. c. 10, s. 4, *post*, p. 95).

(b) "WITHIN THE SPACE OF FORTY DAYS."—When the application has been made within forty days, the justices have power to adjourn the hearing without regard to this limit.

An order which was made on September 22nd, 1849, recited that a summons had been issued to appear "on the 15th day of September instant"; and "whereas the said C. B., having been duly served with the said summons within forty days from the said 15th day of September instant, from which day the hearing of this case hath been adjourned, and now appearing in pursuance thereof by G. H., his attorney, and the said F. A. P. (the mother) having now applied to us," etc.:—*Held*, it was no defect that the order did not state that the summons was served before September 15th, or that the parties appeared on that day, so as to authorise an adjournment to the 22nd, as it was stated that the defendant was duly served with the summons, and that he appeared by attorney at the hearing on the 22nd:—*Held also*, that it sufficiently appeared that the application for the order was within forty days of the service of the summons (*Ex parte Boynton* (1850), 1 L. M. & P. 12).

It is no objection to an order of affiliation that it is made after the lapse of twelve months from the birth of the child if, in fact, the complaint of the woman was made within that period.

Nor that the summons was issued till many months after the application for it.

Nor that it was made more than forty days after the service of the summons, the hearing having been from time to time adjourned, and the first hearing having been within the proper time.

In August, 1850, an order of affiliation was made by two justices, at Durham, at the instance of one Mary Robinson, upon the said John Harrison in respect of a bastard child born on May 10th in the

same year. Against this order he appealed to the next quarter sessions, at which the order was quashed. Subsequently he was again served with a summons, bearing the date July 23rd, 1851, to appear before justices to show cause why an order should not be made upon him for the maintenance of the said child. To this summons he duly appeared on the following August 5th, when the hearing was adjourned to September 2nd, on which day it was again adjourned to September 11th, when an order was made upon him:—*Held*, that it sufficiently appeared on the face of the order that the complaint was made within twelve months from the birth, and the statement in the summons that the child was born within twelve months of its date was immaterial:—*Held also*, that the order was good, although the justices had directed payment from the time of the application, a period of more than thirteen weeks, and that the order was not vitiated by reason of its having been made more than forty days after the service of the summons, the delay being occasioned by the adjournments (*Ex parte Harrison* (1852), 19 L. T. (o.s.) 115; 16 Jur. 726).

(c) “LAWFUL FOR SUCH PUTATIVE FATHER TO APPEAL”—By virtue of this section the putative father is entitled to an appeal to quarter sessions. Formerly, appeals in bastardy might be brought either under the special provisions of the Bastardy Acts or the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

Section 32 of the Summary Jurisdiction Act enacts that where a person is authorised by any past Act to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions he may appeal to such court subject to the conditions and regulations contained in this Act with respect to an appeal to a court of general or quarter sessions. It was held that that section gave an option to the appellant in bastardy cases to proceed either under the Bastardy Acts or the Summary Jurisdiction Acts.

*Rules and Regulations of Appeal.*—But since the passing of the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), all appeals in bastardy must be brought subject to the conditions and regulations of the Summary Jurisdiction Acts.

The preamble of that statute states, “Whereas the Summary Jurisdiction Acts regulate the procedure before courts of summary

jurisdiction, and on appeals from those courts to courts of quarter sessions, and it is expedient to provide for uniformity of procedure in all cases"; and s. 6 enacts, "Where a person is authorised by any Act passed before the commencement of the Summary Jurisdiction Act, 1879, to appeal from the conviction or order of a court of summary jurisdiction made in pursuance of the Summary Jurisdiction Acts, or from the refusal to make any conviction or order in pursuance of those Acts, to a court of general or quarter sessions, he shall, after the passing of this Act appeal to such court subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879, with respect to an appeal to a court of general or quarter sessions."

An appeal to sessions against an order made on a bastardy summons can, since the passing of the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), only be brought subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). The notice of appeal must, therefore, state the grounds of appeal as required by s. 31 (2) of that Act (*R. v. Shingler* (1886), 17 Q. B. D. 49; 55 L. J. M. C. 147; 54 L. T. 749; 51 J. P. 152; 34 W. R. 490).

The conditions are, therefore, regulated by 42 & 43 Vict. c. 49, s. 31. See Appendix, p. 128.

*Recognizance on Appeal.*—By 9 & 10 Vict. c. 10, s. 4, it is enacted, upon appeal against a bastardy order, the party entering into any recognizance for payment of costs shall forthwith give notice in writing of his having so entered to the woman in whose favour the order shall have been made, and in default of his giving notice such appeal shall not be allowed.

By the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31, power is given to any person authorised by the Act to appeal from any conviction or order of a court of summary jurisdiction to sessions, subject to certain conditions, which include the entering into a recognisance, but require no notice of such recognisance. And by s. 32, where appeals under any past Act are in accordance with the regulations prescribed by the Act authorising the appeal, as far as they are unrepealed, such appeal shall not be deemed invalid by reason only that is not in accordance with the regulations of 42 & 43 Vict. c. 49. Upon a rule calling upon the justices of the West.

Riding of Yorks to show cause why a *mandamus* should not issue to hear an appeal against an order adjudging the appellant to be the putative father of a child, it appeared the justices had refused to hear the appeal upon the ground that no notice in writing of the recognizance having been entered into, as required by 8 & 9 Vict. c. 10, s. 4, had been given. The court held since ss. 31, 32 of the Summary Jurisdiction Act, 1879, the notice was unnecessary (*R. v. JJ. of West Riding of Yorks*, W. N. (1882) 34).

*Deposit in lieu of Recognizance.*—By the Summary Jurisdiction Act, 1879, s. 31 (2), the appellant from a court of summary jurisdiction shall, within seven days after the decision, give notice in writing of his intention to appeal, and of the general grounds of such appeal. By sub-s. (3), the appellant shall within three days after giving notice of appeal, enter into a recognizance, or “may if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient” make a deposit instead. A court of summary jurisdiction made an order, and on the same day gave leave to the person affected by the order, who intended to appeal, to make a deposit and fix the amount. Four days later notice of appeal was given. The court of quarter sessions refused to hear the appeal. On an application for a *mandamus* to compel the sessions to hear the appeal:—*Held*, that the intention of s. 31 (2), (3), of the Summary Jurisdiction Act, 1879, was that the court allowing the deposit should have the notice of appeal before them, and the allowance before the notice of appeal was given was invalid, and, therefore, the refusal to hear the appeal was right (*R. v. Anglesey JJ.*, [1892] 2 Q. B. 29; 61 L. J. M. C. 43; 56 J. P. 552; 36 Sol. J. 525).

*Time for Appeal.*—This runs from the time when the judgment of the justices is orally pronounced in court, and not from the time of the signing or serving of the order (42 & 43 Vict. c. 49, s. 31 (2), and *Ex parte Johnson* (1863), 3 B. & S. 947).

*Notice of Appeal.*—This is a “process” within the meaning of 29 Car. 2, c. 7, and, therefore, where the adjudication on an order of affiliation was made on a Saturday, Sunday was held to be excluded from the computation of the twenty-four hours within which notice of appeal is to be given (*R. v. Middlesex JJ.* (1848), 2 B. C. Rep. 271;

3 New Sess. Cas. 152 ; 5 D. & L. 580 ; 17 L. J. M. C. 111 ; 12 Jur. 434).

If a party against whom an order of affiliation has been made applies to a justice stating that he has given notice of appeal, and requires the justice to take his recognizance to appear and try the appeal, and to pay costs, if awarded, the justice has no jurisdiction to decide whether the notice of appeal be sufficient, for that is a question for the sessions on hearing the appeal (*In re Carter* (1855), 3 C. L. R. 293 ; 24 L. J. M. C. 72 ; 1 Jur. (N.S.) 89).

In an appeal against an order of affiliation the mother of the bastard child is a competent witness to prove she received due notice of appeal, the trial of the appeal commencing the instant the appeal is called on for hearing (*R. v. Middlesex JJ.* (1848), 2 B. C. Rep. 271 ; 3 New Sess. Cas. 152 ; 5 D. & L. 580 ; 17 L. J. M. C. 111 ; 12 Jur. 434).

*Notice of appeal in case of twins.*—Justices at petty sessions, after verbally adjudging B. to be the putative father of twin bastard children, and ordering him to pay 1s. a week for the maintenance of each, drew up a separate order in respect of each child. B. gave notice of appeal, and entered into a separate recognizance to prosecute in each case. One notice of recognizance only was served on the mother by the attorney of B., and it stated, "We hereby give you notice that B. has entered into a recognizance to try an appeal," etc., "against an order of affiliation made on," etc., "whereby B. was adjudged to be the father of two bastard children of which you had lately been delivered." It was objected that the notice was insufficient as there was no such recognizance as that stated in the notice, and no such order as an order adjudging B. to be the father of two children :—*Held*, that the notice of recognizance was sufficient as, putting a reasonable construction upon it, it gave the mother sufficient information that B. had entered into recognizances to appeal in respect of each child (*R. v. Recorder of Leeds* (1852), 21 L. J. M. C. 171 ; 1 B. C. C. 50 ; 16 Jur. 451).

*Appeal to adjourned sessions.*—7 & 8 Vict. c. 71, s. 2, which gives to the adjourned sessions holden for the county of Middlesex power to try and determine appeals as if they were a general quarter sessions, merely gives an optional jurisdiction to such adjourned sessions, and does not take away the right of an appellant to wait and to appeal

to the general quarter sessions if he be in other respects in time in his appeal to those sessions (*R. v. Middlesex JJ.* (1848), 2 B. C. Rep. 271; 3 New Sess. Cas. 152; 5 D. & L. 580; 17 L. J. M. C. 111; 12 Jur. 434).

An order was made on June 29th, and notice of appeal on June 30th, which was expressed to be for the next quarter sessions held on July 16th, that being a date fixed for an adjourned sessions at which appeals similar to the appeal in question would be taken. Some time before July 16th the clerk of the peace wrote to the parties pointing out that the appellant was proposing to come to the wrong sessions, and the appeal could not be entered until the October sessions. There was no evidence of what took place on July 16th, but all parties appeared at the October sessions, and the case was adjourned till November. On that occasion objection was taken that the notice was bad, and the justices refused to hear the appeal. On a rule for a *mandamus* the court held that the words in the notice "to be held on July 16th," ought to be rejected as surplusage and made the rule absolute (*R. v. Middlesex JJ.* (1888), 32 Sol. J. 221).

*Death of woman before notice of appeal given.*—If the woman dies after the hearing and before the notice of appeal is given the court of quarter sessions are bound to hear the appeal, notwithstanding that a notice to the woman is a condition precedent to the appeal, as the fulfilment of such condition has become impossible by the act of God.

After an order in bastardy had been made the putative father, intending to appeal, entered into recognizance according to 8 & 9 Vict. c. 10, s. 3, and on the same day sent notice of his having done so by post to the woman. When the appeal came on to be tried it was proved that the woman had died before the notice had been posted to her, and the sessions being of opinion that a condition imposed by 8 & 9 Vict. c. 10, s. 3, as a preliminary to appeal, had not been complied with, refused to hear the appeal:—*Held*, on the demurrer to a return to a *mandamus* to enter continuances and hear the appeal, that performance of the conditions imposed by law having by the act of God become impossible, its performance was excused and a peremptory *mandamus* awarded (*R. v. Leicester JJ.* (1850), 15 Q. B. 88; 4 New Sess. Cas. 124; 19 L. J. M. C. 209; 14 Jur. 550).

*Death of woman before hearing of appeal.*—The point has not yet been decided as to the procedure on the hearing of an appeal by quarter sessions if the mother has died before the appeal comes on for hearing, having regard to s. 6 of 8 & 9 Vict. c. 10, *post*, p. 96, which enacts that no order shall be made by the quarter sessions unless they have heard the evidence of the woman and it has been corroborated in some material particular. Section 2 of 35 & 36 Vict. c. 65 contains similar provisions as a condition precedent to an order being made by the justices on the hearing of the summons, and it has been decided in *R. v. Armitage*, *ante*, p. 31, that no order could be made by the justices if the woman should die before the hearing of the summons. The point was dealt with in the arguments in *R. v. Armitage*, *supra*, but the judges distinctly declined to decide the question. HANNEN, J., in giving judgment, said: "We do not pronounce any opinion upon the effect of the death of the mother after the hearing (before the justices) and before the appeal. That, undoubtedly, would be subject to considerations which it is not necessary to enter upon in this case."

The point was referred to in *R. v. Leicestershire JJ.*, *ante*, and PATTESON, J., in the course of the argument, said: "What is the effect of the death of the respondent, independently of notice? On the appeal the respondent is to begin and prove her case. 8 & 9 Vict. c. 10, s. 6, says the justices in quarter sessions shall hear the evidence of the mother, but she is dead." The argument replied that perhaps the justices who made the order might support it, and that seemed to be the object of giving them notice; and even if the evidence of the mother is indispensable to the appeal, her depositions before justices who made the order were admissible evidence on the trial of the appeal (*Rex v. Ravenstone*, 5 T. R. 373); and if that were not so, the failure of evidence is no greater than in a case where a material and necessary witness has died. The effect may be that the order will be quashed, when, had the witnesses lived, it would have been confirmed, but that is no reason why the appeal should not be heard.

There are further *obiter dicta* of the learned judge reported in the 4 New Sess. Cas. report of the same case, at p. 129: "The examination of the mother is clearly admissible in this case, because the appellant was a party to the proceedings and had an opportunity of

cross-examining the woman, and her evidence may, no doubt, be received as in the case of a *nisi prius* trial between the same parties."

These statements seem to support the view that the appeal can still be heard and an order made by quarter sessions, though the woman is dead, the evidence given by her on the hearing before the justices being admissible after proof having been given of her death. But there is a practical difficulty which still remains. Bastardy proceedings, as it has been seen (*ante*, p. 49), are civil and not criminal, and there are no depositions taken before the justices or signed by the witnesses, and the evidence, therefore, must consist of such notes as may have been taken by the justices' clerk, verified by affidavit, or statements on oath by persons who were in court and heard her give her evidence.

*No stay of execution pending appeal.*—Plaintiff having been ordered by the petty sessions to make certain payments as putative father of a bastard child, appealed to the quarter sessions, which court confirmed the order subject to a special case. In less than six days from the holding of the quarter sessions, and more than a month from the original order, defendant, being a justice of the county, issued a warrant under 7 & 8 Vict. c. 101, s. 3, for the apprehension of plaintiff, on complaint that the payments were in arrear, and for bringing him before two justices, under which warrant plaintiff was apprehended. At the time of issuing the warrant defendant knew of the proceedings on appeal. Plaintiff having sued defendant for the imprisonment under this warrant, without alleging malice:—*Held*, defendant was protected by statute 11 & 12 Vict. c. 44, s. 1, inasmuch as he had jurisdiction to act (*Kendall v. Wilkinson* (1855), 4 E. & B. 680 ; 24 L. J. M. C. 89).

There is no universal judicial maxim or rule that an appeal or writ of error is a stay of execution pending the appeal or writ of error. Some statutes giving an appeal against summary convictions stay execution pending appeal, but the statute which gives the appeal in the present case and the forms adapted indicate a contrary intention. Some regard must likewise be had to the circumstance that the recognizance is only for payment of costs, not for payment of arrears of the maintenance money if the order should be confirmed. So that if the putative father could as a matter of right

escape all liability to contribute to the maintenance of the child pending the appeal, he might for three months allow the child to starve and oppress the mother, although he never meant *bond fide* to prosecute the appeal (*per* Lord CAMPBELL, C.J., and ERLE, J., *ibid.*).

Under s. 18 of 39 & 40 Geo. 3, c. 89, a person convicted of having in his possession naval or ordnance stores marked in the manner specified in the Act may be sentenced to imprisonment with hard labour, without the infliction of a fine. *Semble*, that by s. 21 an appeal lies to the quarter sessions against such a conviction :—*Held*, that where an offender has been committed to prison for such an offence or subsequently enter into a recognizance to prosecute his appeal, this court will not discharge him from custody, as the appeal while pending will not operate as a suspension of the execution (*Ex parte Willmott* (1861), 30 L. J. M. C. 161).

*Non-payment of costs of appeal.*—The defendant can be imprisoned for non-payment of the costs of an appeal.

Upon appeal to quarter sessions against an affiliation order, the order was quashed with costs, and the defendant in default of distress committed to prison :—*Held*, as the word “recoverable” was used by 12 & 13 Vict. c. 45, in alluding to the proceedings under 11 & 12 Vict. c. 43, s. 27, for enforcing the payment of costs, the right to these costs must be taken to be a right to a sum of money recoverable summarily before a justice of the peace within the exception in the Debtors Act, 1869, and the respondent, therefore, was not protected from imprisonment (*R. v. Pratt* (1870), 39 L. J. M. C. 73).

*Appeal by woman.*—There is no appeal by the woman if the decision of the justices is adverse, but she is entitled to apply again ; see *ante*, p. 12.

*Abandonment of appeal.*—The appeal may be abandoned by the putative father subject to 8 & 9 Vict. c. 10, s. 5, *post*, p. 96.

There are two other modes by which the order of the justices can be reviewed.

*Appeal by way of case stated.*—By virtue of 20 & 21 Vict. c. 43, and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33,

either party to the proceedings may, if dissatisfied with the determination of the justices as being erroneous in point of law or in excess of jurisdiction, apply to the court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the court declines to state the case, may apply to the High Court of Justice for an order requiring the case to be stated. The rules and regulations which govern this procedure do not differ in bastardy from those in any other proceedings, and it seems unnecessary to discuss them at length. But this point may be noticed, that by s. 14 of 20 & 21 Vict. c. 43, the appellant in such a case is taken to have abandoned his right of appeal to quarter sessions finally and conclusively to all intents and purposes.

*Appeal by way of writ of certiorari.*—The defendant can also proceed to get such order removed into the High Court by writ of *certiorari*, and there to have the order quashed either with or without an appeal to quarter sessions, but this procedure is only open to him if there is any legal defect apparent on the face of the order, or if it can be shown that the justices had no jurisdiction to entertain the case.

When a conviction or order of justices is returned to the High Court and the proceedings are regular in form and in practice, and the case is one over which the justices have jurisdiction, the court will not hear affidavits impeaching their decision on the facts, nor if they return the evidence will they review their judgment thereon. The test of jurisdiction under this rule is whether or not the justices had power to enter upon the inquiry, not whether their conclusions in the course of it were true or false. It may be shown by affidavit they had no authority to commence an inquiry, inasmuch as the question brought before them was not one to which their jurisdiction extended, and this although by mis-statement they have made the proceedings on the face of them regular (*R. v. Bolton* (1841) 1 Q. B. 66 ; see also *R. v. Farmer*, [1892] 1 Q. B. 637, *ante*, p. 30).

The defendant may get an affiliation order removed into the Queen's Bench Division, and there quashed, either without or after an appeal to quarter sessions, provided the time for obtaining such

writ has not elapsed, but no such writs will be granted by the courts if there is an appeal still pending against the order (*R. v. Sparrow* (1788), 2 T. R. 196 n.).

*Amendment of order on return to writ.*—By Baines' Act (12 & 13 Vict. c. 45), s. 7, it is provided that "if upon the return to any writ of certiorari any objection shall be made on account of any omission or mistake in the drawing up of such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justice or justices making such order or giving such judgment to have authorised the drawing up thereof free from the said omission or mistake, it shall be lawful for the court, upon such terms as to payment of costs as it shall think fit, to amend such order or judgment, and to adjudicate thereon as if no such omission or mistake had existed." Under this only mistakes or omissions in drawing up the order can be amended. See *R. v. Higham*, *ante*, p. 27.

No amendment on a point of substance can be made. A woman was delivered of a bastard child on May 27th, 1870. On August 11th she applied to a justice of the peace for a summons on T., whom she alleged was the father of the child. The summons was issued, but could not be served till March 11th, 1871, and came on to be heard on April 11th, 1871, before the justices, but the woman not being ready with her case, the summons was withdrawn. On the same day—April 11th, 1871—a fresh summons was applied for and issued by another justice of the peace, and after having been duly served, came on for hearing on April 25th, 1871, when the justices adjudged T. to be the father of the child, and made an order which, after reciting the application for and issuing of the first summons dated August 11th, 1870, proceeded to order that T. should pay to the mother the sum of 2s. 6d. a week from August 11th, 1870, until the child should attain the age of thirteen years. The court refused to amend the date from which the payments should have been ordered to be made. "This is not a mistake or omission in drawing up the order, it is a mistake in point of substance. To make the amendment asked for would be to amend the judgment itself; that is clearly beyond the scope of our authority" (COCKBURN, C.J., in *R. v. Tomlinson* (1872), L. R. 8 Q. B. 12; 42 L. J. M. C. 1; 27 L. T. 544; 21 W. R. 170; 37 J. P. 678).

Proceedings by way of *certiorari* in bastardy are governed by the same rules as like proceedings with regard to orders or convictions in general, and hence there are no special features with regard to bastardy which require comment or explanation.

5. *Money under the order to be paid to the mother or to a person appointed by the justices.*] All money payable under any order as aforesaid shall be due and payable to the mother of the bastard child in respect of such time and so long as she lives and is of sound mind, and is not in any gaol or prison, or under sentence of transportation ; and after the death of the mother of such bastard child, or whilst such mother is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, any two justices may if they see fit, by order under their hands and seals from time to time appoint some person who, with his own consent, shall have the custody of such bastard child, so long as such bastard child is not chargeable to any parish or union, and any two such justices may revoke the appointment of such person, and may appoint another person in his stead ; and every person so appointed to have the custody of a bastard child shall, so long as such child is not chargeable to any parish or union, be empowered to make application for the recovery of all payments becoming due (*a*) under the order of the court of petty session as aforesaid, in the same manner as the mother of such bastard child might have done ; and the clerk to the justices making any order on the putative father of a bastard child, or appointing any person to have the custody of such child, as hereinbefore provided, shall as soon as may be send by post or otherwise a duplicate of such order or appointment, signed by such clerk, to the clerk to the guardians of the union or parish in which the mother of such bastard child resided

at the time of making such order or appointment: *Provided always, that no order for the maintenance or support of any such bastard child made in pursuance of this Act shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years, or after the marriage of the mother of such child, or after the death of such child.*

The words in italics have been repealed by the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 2, *ante*, p. 1.

As to the form of appointment, see Appendix, *post*, p. 160.

(a) *Payments becoming due.*—If these words are to be interpreted strictly, it would appear that the guardian would only have power to recover payments due under the order which have accrued subsequent to his appointment. In a case where the defendant went abroad, and remained there until after the death of the mother and the expiration of the order, it is submitted that a guardian appointed after his return would have no power to recover the arrears due under the order. See 66 J. P. 557.

*Custody of illegitimate children.*—The following cases as to the custody of illegitimate children may be of use as a guide to the magistrates in deciding to whom the custody of the child should be given in the case of the incapacity of the mother due to any of the causes enumerated in the section.

A woman placed her illegitimate female child soon after its birth with the defendants who were labouring people, intending to pay them for it. She fell into ill-health and was unable to continue her payments, but the defendants continued to maintain the child till it was nearly seven years old. The mother then applied to have the child delivered to her, which the defendants refused. She, therefore, applied for a *habeas corpus*, which was refused by NORTH, J., but granted by a Divisional Court. The defendants appealed. The mother, who was a kept mistress, did not propose the child should live with her but with a respectable married sister, whose husband was in a station superior to that of the defendants:—*Held*, that the appeal must be dismissed for that the mother of an illegitimate

infant has a natural right to its custody which will be regarded by the court (*R. v. Nash, In re Carey* (1883), 10 Q. B. D. 454; 52 L. J. Q. B. 442; 48 L. T. 447; 31 W. R. 420).

An illegitimate child, whose mother died at its birth, was placed with B. by the maternal grandparents at a weekly payment. The child was returned to the grandparents, but subsequently was claimed by B., and her claim not being acceded to she captured the child. The grandparents thereupon took criminal proceeding under the Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), against B. for stealing the child, but the summons was dismissed on the ground that, as the accused asserted a claim, she was within the saving clause of the Act. The grandparents thereupon recaptured the child, and being summoned by B., the grandmother was committed for trial and bail refused unless the child was given up to B. On application to the vacation judge for a *habeas corpus* to restore the child to the grandmother the rule was made absolute (*In re Dellar* (1884), 28 Sol. J. 816).

The guardians of St. Mary Abbots, Kensington, maintained an illegitimate child, a boy under twelve, at their school. One day the putative father got over a fence, obtained possession of the boy and detained him. The father had previously declined to maintain the child on the ground of the illegitimacy and the boy had been deserted by him. The mother had died in 1882. The boy had been at the school of the guardians ever since to the present time. A writ of *habeas corpus* having been granted and the father having produced the child:—*Held*, that the guardians were entitled to recover the custody of the child, but if they were satisfied the father was *bond fide* willing and able to maintain the child, they would act rightly in giving up the child to him (*Ex parte Guardians of St. Mary Abbots* (1887), 51 J. P. 740).

Except under special circumstances, the putative father is entitled, after the mother's death, to the custody of his illegitimate child as against a person claiming to have been appointed guardian by its mother, and he is entitled by any peaceful means to take possession of it, or to satisfy its being taken for him by others (*In re Kerr* (1888), 24 L. R. Ir. 642).

In determining who is to have the custody of and control over an illegitimate child, the court in exercising its jurisdiction with a

view to the benefit of the child primarily consider the wishes of the mother (*Barnardo v. McHugh*, [1891] A. C. 388 ; 65 L. T. 423).

The authorities do not establish the proposition that the legal rights of the mother of an illegitimate child as to its custody are the same as those of the father of a legitimate child (*per* Lord HERSCHELL and FIELD, J., *ibid.*).

The mother of an illegitimate child in October 1881, agreed with Mr. and Mrs. S. to let them have the custody of and educate and maintain the child, and they did so for seven years. The child being sent on a visit to its mother was, contrary to agreement, kept by her for two months, when the mother was convicted and sentenced to penal servitude. Mrs. S. then took charge of the child again for seven months, and then handed the child over to the guardians who kept the child for nine months :—*Held*, that as there was no desertion by the mother, the guardians could not dispose of the child, but as the mother was leading an immoral life the court ordered that the child should be restored to Mrs. S. to be educated as the mother desired (*R. v. Bolton Union* (1892), 56 J. P. 149).

The provisions of the Custody of Children Act, 1891 (54 Vict. c. 3), should be referred to with reference to this subject.

**6.** *Mother punishable for neglect or desertion of her bastard child under 5 Geo. 4, c. 83.*] Every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union, shall be punishable as an idle and disorderly person, under the provisions of the Vagrancy Act, 1824 ; and every woman so neglecting to maintain her bastard child, after having been once before convicted of such offence, and every woman deserting her bastard child, whereby such bastard child becomes chargeable to any parish or union, shall be punishable as a rogue and vagabond, under the provisions of the said last-recited Act.

See the Order of the Local Government Board on this subject.

The Act under which offences against this section are dealt with is 5 Geo. 4, c. 83.

By 4 & 5 Will. 4, c. 76, s. 71 (Appendix, *post*, p. 127), the mother is bound, so long as she shall remain unmarried or a widow, to maintain her bastard offspring as part of her family until such child shall attain the age of sixteen, or on the marriage of such child under the age of sixteen if a female.

**7.** *In case bastard becomes chargeable to parish, etc., after death or incapacity of mother, guardians or overseers may make application for enforcement of order:—Payments to be made to person appointed by justices.] [And be it enacted, that it shall not be lawful for any justice of the peace to appoint any officer of any parish or union to have the custody of any bastard child as hereinbefore provided, or for any officer of any parish or union, clerk of justices, or constable, to receive any money in respect of any bastard child under an order of petty session as aforesaid, or as such officer to conduct any application to make or enforce such order, or in any way to interfere as such officer in causing such application to be made, or in procuring evidence in support of such application, under a penalty of forty shillings, to be levied on conviction before any two justices as penalties and forfeitures under the said first recited Act: Provided always, that]* after the death of such mother, or if such mother be incapacitated as aforesaid, so often as any bastard child for whose maintenance such order of petty sessions has been made becomes chargeable to any parish or union by the neglect of the putative father to make the payments due under the orders of justices, then and in such case it shall be lawful for any board of guardians of a union or parish, or if there be no such board of guardians for the overseers of any parish or place, to make such application for the enforcement of the order as might have been made by the mother of such bastard child if alive; but all payments for the main-

tenance of such child made in pursuance of such application shall be made to some person to be from time to time appointed by the justices as hereinbefore provided, and on condition that such bastard child shall cease to be chargeable to such parish or union.

The words in italics have been repealed by the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65, s. 2), Sched. I., *ante*, p. 1.

This section enables the guardians to enforce after her death, an order already obtained by the mother where the child becomes chargeable to any union or parish by the neglect of the putative father to make the payments due under the order of the justices.

Where the mother having obtained an order is still alive, and the child becomes chargeable, the guardians may apply under 35 & 36 Vict. c. 65, s. 7, *ante*, p. 58. Where no order has been obtained by the mother who is still alive, and the child becomes chargeable, the proper course is for the guardians to apply under 36 Vict. c. 9, s. 5, *ante*, p. 64. No order can be obtained by the guardians after the death of the mother (*R. v. Armitage*, *ante*, p. 31).

As to the enforcement of the order, see *ante*, p. 49.

8. *Penalties on officers promoting marriage by threat of application to sessions, and on person appointed misapplying moneys, or maltreating bastard.*] If any officer of a union, parish, or place endeavour to induce any person to contract a marriage by threat or promise respecting any application to be made or any order to be enforced with respect to the maintenance of any bastard child, such officer shall be guilty of a misdemeanor; and every person having the custody of any bastard child under any order of justices, as hereinbefore provided, who may misapply moneys paid by the putative father for the support of such child, or may withhold proper nourishment from such child, or otherwise abuse and maltreat such child, shall, on conviction before any two justices, forfeit and pay a sum not exceeding ten pounds.

9. *Existing orders, etc., not to be affected.*—Orders made before 14th of August, 1834, to cease on 1st of January, 1849.] And be it enacted, that nothing in this Act contained shall affect the validity of any order for the maintenance of a bastard child made by justices in quarter or petty sessions before the passing of this Act; but no such order made before the fourteenth day of August one thousand eight hundred and thirty-four shall be in force after the first day of January one thousand eight hundred and forty-nine, and that all proceedings actually pending before justices in quarter sessions or petty sessions at the time of the passing of this Act may be continued, and orders made therein in the same manner as if this Act had not been passed.

This section is of no further practical use owing to the lapse of time.

10. *Orders made by justices acting in two adjoining counties to be valid, although not made in the county in which the parish is situate.*] And whereas various unions established under the authority of the said recited Act are situate partly in one county, riding, or division, and partly in an adjoining county, riding, or division: And whereas doubts have been entertained whether any justice of the peace acting under two commissions for different counties, ridings, or divisions can legally make orders in bastardy when acting in petty sessions within the limits of one of such commissions, for such parts of such unions as are situate within the limits of the other of such commissions: And whereas it is expedient to remove all such doubts with regard to orders which have before the passing of this Act been made under such circumstances; be it therefore enacted, that all orders in bastardy which have been made by any justices of the peace acting as such under two commissions for any two

*adjoining counties, ridings, or divisions shall, although not made within the county, riding, or division in which the parish interested in the order, or any part thereof, is situate, be as valid, good, and effectual in the law, to all intents and purposes, as if they had been made within such county, riding, or division.*

These sections have been repealed by the Statute Law Revision Act (37 & 38 Vict. c. 96).

\*                      \*                      \*                      \*

## THE BASTARDY ACT, 1845.

(8 & 9 VICT. c. 10.)

*An Act to make certain Provisions for Proceedings in Bastardy.* [8th May 1845.]

WHEREAS divers questions have been raised as to the validity of certain orders in bastardy made by justices under the Act of the last session of Parliament, intituled an Act for the further Amendment of the Laws relating to the Poor in England, which questions are wholly beside the merits of the cases ; and it is desirable to remove such questions, and to prevent the recurrence of the same or similar questions in future :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same :

**1.** *Proceedings in Bastardy according to the Forms in the Schedule hereto valid.*]

This section together with the schedule to this Act are repealed by the Statute Law Revision Act, 1875.

The forms are now issued by the Local Government Board under the Bastardy Laws Amendment Act, 1873 (36 & 37 Vict. c. 9, s. 6), *ante*, p. 69, and Appendix, *post*, pp. 133, *et seq.*

**2.** *Mother, when order has been quashed for defect in form, may apply again within six calendar months.] And be it enacted, that when any order made under the provisions of the said Act prior to the passing of this Act shall have been or shall be quashed for any defect therein, and not upon the merits, it shall be lawful for the mother of the bastard child in whose favour such order shall have been made to take proceedings for the obtaining of another order, according to the provisions of the said Act, at any time within the space of six calendar months after the passing of this Act, although the period limited for her application to the justice under the said Act shall have expired.*

The provisions of this section referring to orders made before the Act are now spent.

**3.** *Condition, etc., of recognizance to be given on appeal by putative father of bastard.—Notice to be given to mother, etc.]*

This section is repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), and is replaced by s. 31 of the Summary Jurisdiction Act, 1879, by which the procedure in appeals in bastardy is now regulated (*cf.* note to 7 & 8 Vict. c. 101, s. 4, *ante*, p. 76, and Appendix, *post*, p. 128).

**4.** *Provision as to the mode of proceeding in cases of applications by women who are pregnant.] And whereas it is enacted by the said Act, that any single woman who may be with child may apply to a justice of the peace as therein described for a summons to be served upon the man alleged by her to be the father of such child, and that*

such justice shall thereupon issue his summons to such man to appear at a petty session, as therein also set forth, and power is given to such woman after the birth of the child to apply to the justices at such petty sessions for an order upon the person so alleged by her to be the father of such child ; but doubts are entertained as to the time which shall be fixed by such justice for the appearance of the said man so summoned at petty sessions, and it is desirable to remove the same : Be it therefore enacted, that the said justice to whom any application shall be made by any such woman being pregnant shall summon the man to appear at some petty session at which he usually acts to be held on a day after the time when the said mother shall expect the child to be born, provided that if on such day the woman shall not have been delivered, or the justices shall be satisfied that she has been delivered at so short a period before such day that she cannot appear at the said session, it shall be lawful for the justices thereat to adjourn the hearing of the said case until some other day, and so from time to time until the child shall have been born, and the woman shall be able to attend at the said session ; and it shall be lawful for the justices at their petty session to make an order in respect of any such application so made by such woman so pregnant to a justice as aforesaid, if she apply at such petty session within the space of two calendar months from the birth of the child, although more than forty days shall have elapsed from the time when the summons was served upon the alleged father, or was left at his last place of abode.

This section regulates the procedure in case of an application by the woman before the birth of the child. If the woman applies under this section she must make a deposition in writing on oath as to who is the father of the child (see 35 & 36 Vict. c. 65, s. 3, *ante*, p. 20), and the justices have power to order the weekly payments to-

commence from the birth of the child (35 & 36 Vict. c. 65, s. 4, *ante*, p. 49); and not from the date of the order as in other cases, except where the application is made within two months after the birth of the child.

It was felt in the case of an application by a woman before the birth of the child, the forty days' limit from the service of the summons within which the application for the order must be made (see 7 & 8 Vict. c. 101, s. 4, *ante*, p. 75) might entail a hardship, so by this section the woman is entitled to make her application for an order at any time within two months from the birth of the child without regard to the time which might have elapsed since the service of the summons. The justices, of course, may adjourn the hearing without regard to such limit of two months and make the order at any time provided the application for the order has been made within such limit.

**5.** *Putative father may abandon his appeal, and his recognizance shall not be estreated.*] If at any time before the hearing of the appeal the putative father who shall have entered into any such recognizance shall give notice in writing of his abandonment of the appeal to the mother of the child in whose favour the order shall have been made, and to the justice or justices before whom the said recognizance shall have been taken, and shall pay or tender to the said mother all sums then due under the said order, and such costs and expenses as she shall have incurred by reason of such notice of appeal, the said recognizance so entered into by the said putative father shall not be estreated, nor in any manner put in force or otherwise proceeded with.

As to the rules and regulations of appeal, see p. 76, and Appendix, p. 128.

**6.** *The evidence of the mother of the bastard child, etc., to be received by the Court of Quarter Sessions, on appeal against the order in bastardy; but order not to be confirmed unless her evidence is corroborated.*] And whereas by the said recited Act it is enacted, that where any woman

shall apply to the justices at a petty session for an order upon the person whom she shall allege to be the father of her bastard child, such justices shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father, and if the evidence of the said mother be corroborated in some material particular by other testimony to the satisfaction of the said justices, they may make such order as is therein set forth : And whereas power is thereby given to the putative father to appeal to the general quarter sessions of the peace against such order, but it is not therein set forth what evidence the said general quarter sessions shall or may hear on the trial of such appeal, and doubts have been raised as to whether the said mother can be heard by the said court of quarter sessions : Be it therefore enacted, that on the trial of any such appeal before any court of quarter sessions the justices therein assembled, or the recorder (as the case may be), shall hear the evidence of the said mother, and such other evidence as she may produce, and any evidence tendered on behalf of the appellant, and proceed to hear and determine the said appeal in other respects according to law, but shall not confirm the order so appealed against unless the evidence of the said mother shall have been corroborated in some material particular by other testimony, to the satisfaction of the said justices in quarter session assembled, or the said recorder.

This section provides that on the hearing of the appeal the same course must be followed as on the hearing of the original summons by the justices.

No order can be made by the quarter sessions unless they hear the evidence of the woman which must be corroborated in some material particular by other testimony.

But the difficulty arises as to whether an appeal can be heard after the death of the woman having regard to the provisions of this section. The point has not yet been decided, but the question will be found discussed in the note to s. 4 of 7 & 8 Vict. c. 101, *ante*, p. 80.

It may be noticed that the word "testimony" is used in this section, while in s. 4 of 35 & 36 Vict. c. 65, which regulates the procedure on the application of the mother to the justices, the expression used is "if the evidence of the mother be corroborated in some material particular by other 'evidence.'" This latter section is substituted for s. 3 of 7 & 8 Vict. c. 101, which is now repealed but which contains the same word "testimony." It may, perhaps, be assumed that the legislature had some purpose in changing the word "testimony" to "evidence." But, as a matter of fact, no difficulty has arisen in practice, and it may therefore be presumed that in no other respects the hearing before quarter sessions is a fresh hearing governed by the same rules as to evidence as the hearing before the justices, that the words testimony and evidence are synonymous.

**7.** *Parties may be heard at the petty session by counsel or attorney.*] It shall be lawful for any woman who shall apply to the justices at any petty session for any such order as aforesaid to be assisted in her application by counsel or attorney, or for any person summoned under the said Act to appear at any such petty session as the alleged putative father to appear and make his answer thereto by counsel or attorney; and it shall be lawful for either of such parties to have all witnesses examined and cross-examined by such counsel or attorney.

The personal appearance of the defendant is dispensed with by this section, and the order made in his absence must state that the evidence was given in the presence of the defendant's counsel or attorney (*R. v. Shipperbottom* (1847), 10 Q. B. 514 ; 2 New Sess. Cas.

64; 16 L. J. M. C. 113). If the complainant wishes to have the defendant present in order to call him as a witness, he must be served with a witness summons (*R. v. Flavell* (1855), 14 Q. B. D. 364; 52 L. T. 133; 49 J. P. 406; *ante*, p. 33).

8. *In default of sufficient distress within the jurisdiction of the justices, putative father may be committed to prison.*] And whereas it is provided in the said first-recited Act, that if default be made by the putative father in payment of the sums ordered to be paid to the mother of a bastard child, any justice may by warrant cause such putative father to be brought before any two justices; and it is further provided, that such two justices may by warrant direct the sum appearing to be due under any such order, and the costs, to be recovered by distress and sale of the goods and chattels of such putative father; and if upon the return of such warrant, or if, by the admission of such putative father, it appears that no sufficient distress can be had, then any such two justices may cause such putative father to be committed to prison: And whereas doubts have been entertained whether such power of committal exists where it is shown that the putative father has goods and chattels whereon a distress might be levied, but the same are not within the jurisdiction of such justices: Be it therefore declared and enacted, that the said justices are and shall be empowered to commit any such putative father to prison, according to the provisions of the said Act, if it appear on the return of such distress warrant, or on the admission of the putative father, that no sufficient distress can be had on any goods and chattels within the jurisdiction of the justices before whom he shall have been brought on such warrant of apprehension.

9. *Magistrates of metropolitan police courts may act alone in cases of bastardy.*] Any one magistrate of the police courts of the metropolis, sitting at a police court within the metropolitan police district, has and shall have full power to issue summonses for the appearance of parties and witnesses before such police court, and to do alone any other thing in any matter of bastardy arising under the said Act, within those parts of the said district for which a police court has been or shall be established, which may be done by any justices at a petty session holden for their several petty sessional divisions in any such matter arising within their divisions respectively; and the sitting of such magistrate at such police court shall be within all the provisions of the said Act and of this Act concerning a petty session of justices.

10. *"Petty sessional division," what to include.*] The term "petty sessional division" in the said Act and this Act shall be taken to include any division of a county, riding, or division having a separate commission of the peace in which one or more petty sessions have been or shall be usually held, or any division for the holding of special sessions formed or to be formed under the provisions of the Act of the ninth year of the reign of his late Majesty King George the Fourth, intituled An Act for the better Regulation of Divisions in the several Counties of England and Wales, or of the Act of the sixth year of the reign of his late Majesty amending the same; and where there are two or more petty sessions usually held in any such division, or where any justice acts for two or more of such divisions, he shall require the party whom he shall summon under the

authority of the said first-recited Act to appear at the petty session to be held in any such division, as he shall deem fit.

**11.** *Interpretation of the word "recorder."*] In the said first-recited Act and in this Act the word "recorder" shall be taken to apply to any person who shall preside as the judge at any court of general or quarter session held for any city, borough, liberty, or other place of limited jurisdiction.

**12.** *Act may be amended this session.*] *And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.*

This section has been repealed by 38 & 39 Vict. c. 66 (S.L.R.).

## SCHEDULE referred to by the foregoing Act.

The schedule to this Act has been repealed by the Statute Law Revision Act, 1875, and the forms used are those issued by the Local Government Board by virtue of the Bastardy Law Amendment Act, 1873 (36 Vict. c. 9), s. 6. See Appendix, *post*.

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## GESTATION.

The subject of gestation is a medical rather than a legal question, but it becomes of importance in certain cases under the bastardy laws, where intimacy with the woman is admitted by the defendant, who relies, however, on the defence that, owing to the time at which that intimacy took place, it could not have resulted in the birth of the child, the paternity of which is sought to be attributed to him.

Justices in considering the question may have to come to their decision without medical testimony, or have to judge between conflicting statements of opinion by medical experts, and counsel and solicitors appearing may have to cross-examine as to the point in question.

The opinions of celebrated experts, as expressed in the text books on the subject, are quoted below, so as to form some guide to those who may have to appear as either judges or advocates in matters of affiliation.

According to the testimony of experienced accoucheurs, the average duration of gestation in the human female is comprised within the 38th and 40th weeks after conception. Numerous facts show that the greater number of children are born between these two periods. Out of 186 cases reported by Dr. Murphy, the greater number of deliveries took place on the 285th day ; but his opinion is that 301 days may be taken as the average limit of gestation. Among 500 cases reported by Dr. Reid, there were 283 in which the period of gestation was within 280 days, and 217 cases in which it went beyond this period. Observations have shown that women differed from each other, and in several cases the time has exceeded or fallen short of the period of 40 weeks, which has usually been set down as the limit of natural gestation. Hence, it will be perceived, that in well-observed cases, where there could be no motive for mis-statement, and in which the characters of the women were beyond suspicion, a difference of not less than 33

days has been observed to occur (Taylor's Medical Jurisprudence (1873), vol. ii., pp. 243, 244).

In a practical point of view, we may consider the average duration of pregnancy is about 280 days from the date of the last catamenia, and about 274 or 275 days from the time of coitus when this can be ascertained. There is, therefore, a general consent amongst the best obstetricians as to the duration of pregnancy—the extremes being from 266 days or 38 weeks to 280 days or 40 weeks (Legal Medicine, Tidy (1882), Part II., pp. 48, 49).

As we have seen that no affiliation order can be made in the case of a still-born child (*R. v. de Brouquens*, ante, p. 24), it becomes of importance to show the earliest date at which a child can be born alive.

The Code Napoleon mentions 180 days, or six calendar months, as the earliest period of utero gestation when a child may be born alive. The Scotch law allows an infant to be viable at six lunar months, or 168 days.

There is no evidence to show that a foetus born at an earlier period than between the fourth and fifth month of uterine existence can in any sense be said to be born alive.

Living children have been born between the fourth and fifth month of uterine life. There is, however, no well authenticated case where less than a five months' child has lived beyond twenty-four hours after its birth, and but one where it has lived for twenty-four hours.

Children born alive at the fifth, or between the fifth and sixth months of utero gestation, mostly die after a few hours.

Several authenticated cases exist where children born between the sixth and seventh, and even at the sixth month, have reached adult age (Legal Medicine, Tidy (1882), pp. 50, 51).

As to whether the child was of full time or not can only be decided by the justices on the evidence of the medical man or midwife.

A table is annexed, which may be of service in calculating the time in such cases.

## PERIODS OF GESTATION.

NOTE.	IF THE DATE OF BIRTH BE	1	2	3	4
		9 Calendar Months or 10 Lunar Months, 40 weeks, or 280 days previously would be	8 Calendar Months or 9 Lunar Months, 36 weeks, or 252 days previously would be	7 Calendar Months or 8 Lunar Months, 32 weeks, or 224 days previously would be	6 Calendar Months or 7 Lunar Months, 28 weeks, or 196 days previously would be
<p>The ordinary period of Gestation being <b>40 WEEKS</b>. Justices will look with suspicion at evidence which dates the intercourse said to have resulted in conception at a period either <i>beyond</i> or <i>within</i> that time. But as the period of Gestation <b>MAY BE PROTRACTED FOR POSSIBLY A FORTNIGHT</b> or a day or two longer, and on the other hand, may be <i>hastened</i> by even three months; it will be their especial duty to require satisfactory evidence to account for either of the foregoing facts.</p>	Jan. 1	Mar. 27	Apr. 24	May 22	June 18
	" 10	Apr. 6	May 4	June 1	" 28
	" 20	" 16	" 14	" 11	" 8
	Feb. 1	" 27	" 25	" 22	" 20
	" 10	May 7	June 4	July 2	" 30
	" 20	" 17	" 14	" 12	Aug. 9
	Mar. 1	" 25	" 22	" 20	" 17
	" 10	June 4	July 2	" 30	" 27
	" 20	" 14	" 12	Aug. 9	Sept. 6
	Apr. 1	" 25	" 23	" 20	" 17
	" 10	July 5	Aug. 2	" 30	" 27
	" 20	" 15	" 12	Sept. 9	Oct. 7
	May 1	" 25	" 22	" 19	" 17
	" 10	Aug. 3	Sept. 1	" 29	" 27
	" 20	" 13	" 11	Oct. 9	Nov. 6
	June 1	" 25	" 22	" 20	" 17
	" 10	Sept. 4	Oct. 2	" 30	" 27
	" 20	" 14	" 12	Nov. 9	Dec. 7
	July 1	" 24	" 22	" 19	" 17
	" 10	Oct. 4	Nov. 1	" 29	" 27
	" 20	" 14	" 11	Dec. 9	Jan. 7
	Aug. 1	" 25	" 22	" 20	" 17
	" 10	Nov. 4	Dec. 2	" 30	" 27
	" 20	" 14	" 12	Jan. 9	Feb. 6
	Sept. 1	" 25	" 23	" 20	" 17
	" 10	Dec. 5	Jan. 2	" 30	" 27
	" 20	" 15	" 12	Feb. 9	Mar. 9
	Oct. 1	" 25	" 22	" 19	" 19
	" 10	Jan. 4	Feb. 1	Mar. 1	" 29
	" 20	" 14	" 11	" 11	Apr. 8
	Nov. 1	" 25	" 22	" 22	" 19
	" 10	Feb. 4	Mar. 4	Apr. 1	" 29
	" 20	" 14	" 14	" 11	May 9
	Dec. 1	" 24	" 24	" 21	" 19
	" 10	Mar. 6	Apr. 3	May 1	" 29
	" 20	" 16	" 13	" 11	June 8

## LEGITIMACY.

It having been decided that a married woman may apply for an order of affiliation if her child is really the offspring of an adulterous intercourse (see *R. v. Collingwood* and *R. v. Pilkington*, *ante*, pp. 3, 4), questions will arise on the hearing of a summons by a married woman as to the evidence which can be given in support of the illegitimacy of the child in question. A long series of decisions have been given on the point, and the head-notes of the leading cases and quotations from the judgments found collected in the following pages, will illustrate the working of the rules laid down by the courts under the various circumstances in which the question has arisen. The whole discussion may be broadly summed up as follows : Every child born in wedlock is presumed by the law to be legitimate, and this presumption is not to be set aside on suspicion or probability ; but the evidence must be clear, distinct, and conclusive against it. Neither the husband or wife will be permitted to give any evidence tending to bastardise the child, but statements and letters written by the parties *ante litem motam* are admissible as evidence of their conduct, although they would not be allowed to make such statements themselves in the witness box.

This rule is not affected by the Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 69), s. 3, which provides that parties to any proceeding instituted in consequence of adultery shall be competent to give evidence in such proceeding.

The question of non-access is a question of fact for the justices.

It is a rule founded on decency, morality, and policy that the husband and wife shall not be permitted to say after marriage that they have had no connection, and that, therefore, the offspring is spurious (*per* Lord MANSFIELD in *Goodright v. Moss* (1777), 2 Cowp. 591).

A woman cannot give evidence of the non-access of her husband to bastardise her issue, though her husband be dead at the time of her examination as a witness ; and, therefore, an order of sessions

stated by that court to be founded in part upon credence given to her testimony of that fact, was quashed (*Rex v. Kea* (1809), 11 East, 132).

“The presumption of legitimacy arising from the birth of child during wedlock, the husband and wife not being proved to be impotent and having opportunities of access to each other during the period in which a child could be begotten and born in the course of nature may be rebutted by circumstances inducing a contrary presumption” (*Answer of the judges to a question asked by the House of Lords in the Banbury Peerage Case* (1811), 1 Sim. & St. 153).

If a husband have access, and others at the same time have a criminal intimacy with his wife and she has a child, such child is legitimate; but if the husband and wife be living separately, and the wife is notoriously living in adultery, a child born under such circumstances would be illegitimate, although the husband had an opportunity of access. On the trial of an issue as to whether A. is the legitimate son of B., neither the declaration of B. nor of his wife, the mother of A., are receivable to show that A. is illegitimate. But a baptismal register, in which A. is described as the illegitimate child of his mother, is admissible on the trial (*Cope v. Cope* (1833), 5 C. & P. 604; 1 M. & Rob. 269).

In the case of a married woman, she cannot be examined for the purpose of proving non-access during the marriage, nor can she give evidence as to any collateral fact for the purpose of proving non-access, as that the husband at a particular time lived at a distance from his wife and cohabited with another woman (*Rex v. Sourton* (1836), 5 A. & E. 180).

“Suppose in a dispute respecting legitimacy it were an issue directed by the Court of Chancery, whether the husband and wife had or had not access to each other, I should say that neither of them can answer any question to prove the negative or affirmative of that single issue” (*per LITLEDALE, J., ibid.*).

A husband and wife, after living together for ten years and having one child, agreed to separate. They, accordingly, afterwards lived apart, but within such distance as afforded them opportunities of sexual intercourse, the husband not being impotent:—*Held*, that the presumption of law in favour of the illegitimacy of a child begotten and born of the wife during separation, may be rebutted

not only by evidence to show that the husband had not sexual intercourse with her, but also evidence of their conduct, as that the wife was living in adultery; that she concealed the birth of the child from the husband, and declared to him that she never had such child; that the husband disclaimed all knowledge of the child, and acted, up to his death, as if no such child was in existence, and, also, that the wife's paramour aided in concealing the child, reared and educated it as his own, and left all his property by his will (*Morris v. Davies* (1837), 5 Cl. & F. 163).

"This is the view I have always taken of the law connected with this subject. At the same time, as I before expressed and now feel, that presumption of law, which is that a child born in wedlock is the child of the husband, is not lightly to be repelled. It is not to be broken in upon or shaken by a mere balance of probability. The evidence for the purpose of repelling it must be strong, distinct, satisfactory, and conclusive": *per* Lord LYNTHURST, *ibid.*

On a trial as to legitimacy of children begotten when the husband and wife were living separately, the fact that they had opportunities of access is not conclusive evidence of the legitimacy, but the presumption of intercourse may be rebutted by circumstances. If there was an opportunity of access, and the wife was notoriously living in adultery, it does not necessarily follow that a child begotten while such opportunity existed was not the husband's. By a case sent from quarter sessions on a question of settlement it appeared that a wife was deserted by her husband, who went to live with another woman, that the wife, at the end of three or four years, married another man and that she had two children by him, and that eleven years after the second marriage she again cohabited with her husband. It did not appear where the husband was between the times of his deserting and again cohabiting with his wife:—*Held*, that the sessions were not warranted on this evidence in finding non-access of the husband at the times when the children were begotten, and, therefore, that the wife's evidence could not be received to prove them illegitimate (*R. v. Inhabitants of Mansfield* (1841), 1 Q. B. 444).

A child born of a married woman is, in the first instance, presumed to be legitimate. The presumption thus established by law is not to be rebutted by circumstances which only create doubt and

suspicion, but it may be wholly removed by showing that the husband was (1) incompetent ; (2) entirely absent, so as to have no intercourse or communication of any kind with the mother ; (3) entirely absent at the period during which the child must, in the course of nature, have been begotten ; (4) only present under circumstances as afford clear and satisfactory proof that there was no sexual intercourse. Such evidence as this puts an end to the question and establishes the illegitimacy of the child of a married woman. It is, however, very difficult to conclude against the legitimacy in cases where there is no disability and where some society or communication is continued between husband and wife during the time in question so as to have afforded opportunities of sexual intercourse, and in cases where such opportunity have occurred, and in which any one of two or more men may have been the father, whatever probabilities may exist, no evidence can be admitted to show that any man, other than the husband, may have been, or probably was, the father of the wife's child. Throughout the investigation the presumption in favour of the legitimacy is to have its weight and influence, and the evidence against it ought to be strong, distinct, satisfactory, and conclusive (*Hargrave v. Hargrave* (1846), 9 Beav. 552).

The illegitimacy of a child born of a married woman is established beyond all dispute by evidence of her living in adultery at the time when the child was begotten and of her husband then residing in another part of the kingdom so as to make access impossible (*Saye and Sele Barony* (1848), 1 H. L. Cas. 507).

On the trial of an issue as to the legitimacy of a child born of a married woman the evidence of the husband is not admissible for the purpose of proving access or for the purpose of proving any collateral fact which would tend to show he had opportunities of access. Nor in such case is evidence of expressions of feeling by the wife towards the husband admissible. If the jury are satisfied that intercourse took place between the husband and the wife at such times as in the course of nature to account for the birth of the child, such child must be taken to be the husband's child, although during the same period other men may have had intercourse with the mother (*Wright v. Holdgate* (1850), 3 C. & K. 158).

The presumption of law arising from the fact of husband and wife sleeping together is irresistible as to the legitimacy of a child of the

wife, unless there is clear and satisfactory evidence that some physical incapacity existed. Where such physical incapacity is satisfactorily made out according to the opinions of the medical witnesses, evidence of the adultery of the wife is still an important ingredient in determining the legitimacy of the child, because if the wife were of irreproachable character it would go far to modify the opinion as to the husband's incapacity. The declaration of a mother is not admissible to prove non-access on the part of her husband ; but where non-access has been established *aliunde* the declaration of the wife is admissible to prove the paternity of the child.

Where a husband, after a long absence, did not rejoin his wife till November 24th, 1849, and where she, nevertheless, produced to him a full grown child on May 18th, 1850 :—*Held*, that he could not have been the father and that she was guilty of adultery. Strict proof of non-access in such cases is required (*Heathcote's Divorce Bill* (1851), 1 Macq. H. L. 277).

The mother of a child wrote a letter to the alleged father of her child, which was born three months after her husband's death. It did not appear this letter was ever received by the person to whom it was addressed, or that she had ever voluntarily parted with possession of it :—*Held*, that the letter was not admissible as evidence of the conduct of the mother (*Legge v. Edmonds* (1856), 25 L. J. Ch. 125 ; 20 J. P. 19 ; but see the *Aylesford Peerage Case*, *post*).

“ When a child is born by a married woman during wedlock and the parties are so situated that a husband might have had access so as to become the father of the child, then the law presumes that it is so ; but that rule of law is subject to this qualification, that it may be rebutted by other circumstances showing that such intercourse had not, in fact, taken place. Now, I find that during the nine months and more preceding the birth of the child the husband and wife were living separate, though both in the same town. It is found as a fact, and the justice was satisfied by the evidence, that the parties had not lived together during the last three years ; that she had been living a life of the most profligate adultery ; that the husband well knew of this ; and that during that period he had anxiously avoided her, and when she came about his house he ordered her to be removed, and, if necessary, to be given into custody. These are circumstances sufficient to rebut the presumption of law and satisfactorily to prove that the parties lived so near each other that

they might, if disposed, have had intercourse, yet they had had none" (*per* WIGHTMAN, J., in *Sibbet v. Ainsley* (1860), 24 J. P. 823).

But where a husband was confined in a lunatic asylum, not by reason of general imbecility, but on account of certain delusions, and there was evidence to show the possibility of sexual intercourse between the husband and wife, a child born of the wife was held to be legitimate (*Plowes v. Blossley* (1862), 26 J. P. 325).

The evidence to repel the presumption of legitimacy of a child born during wedlock, must be strong, distinct, satisfactory, and conclusive, and such as to produce a judicial conviction that the child was not procreated by the husband. Where, however, a husband and wife lived together for nine years without having a child, and then separated, and a child was born ten years after the separation, while the wife was in the habit of committing adultery with another man, which child was treated by the paramour as his own, and was called by his surname, and brought up by him, the child, notwithstanding possibility of access on the part of the husband, was held to be illegitimate. A mother's evidence is inadmissible to prove the legitimacy or illegitimacy of her child born during wedlock (*Atchley v. Sprigg* (1864), 33 L. J. Ch. 345 ; 10 L. T. 16).

The rule as to the inadmissibility of the husband and wife in such cases is not affected by the Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 69), s. 3, which provides that parties to any proceeding instituted in consequence of adultery shall be competent to give evidence in such proceeding.

Proceedings by guardians of the poor before justices against a husband to compel him to maintain his child, which, although born of his wife in wedlock, he refuses to maintain on the ground that he is not the father, are not "proceedings instituted in consequence of adultery" within the meaning of the Evidence Further Amendment Act, 1869 (32 & 33 Vict. c. 68), s. 3, so as to make his evidence admissible to prove non-access to his wife, and thereby bastardise his child (*Nottingham Union v. Tomkinson* (1879), L. R. 4 C. P. D. 343 ; 48 L. J. 171 ; 28 W. R. 151).

The presumption in favour of the legitimacy of a child born in wedlock is not a *presumptio juris et de jure*, but may be rebutted by evidence, which must be clear and conclusive, and not resting merely on a balance of probabilities. In a suit for a declaration of legitimacy where a child had been born 276 days after the last opportunity of

intercourse between husband and wife, and where there was evidence in the wife's conduct tending to show that she regarded the child as the offspring of her paramour, the President directed the jury it was for them to say whether, on the whole of the evidence given on behalf of those who asserted illegitimacy, the conviction had been brought home to their minds that the husband was not the father of the child, and read to them the opinion of Lord LYNTHURST in *Morris v. Davies, supra*. The jury found the child was illegitimate:—*Held*, that the direction was right, and the verdict was not against evidence (*Bosville v. Attorney-General* (1887), 12 P. D. 177; 56 L. J. P. D. & A. 97; 57 L. T. 588).

Where the legitimacy of a child born in wedlock is in issue, previous statements by the mother that the child is a bastard are admissible as evidence of her conduct, although she could not be allowed to make such statements in the witness box (*Aylesford Peerage Case* (1885), 11 App. Cas. 1).

Power was given to the trustees of a will to apply the income of a trust fund towards the maintenance and education of the children of a named woman during minority. There were two infant children, and an application was made to the court on behalf of one of them that the income arising from the moiety of the trust fund might be applied for the maintenance and education of such infant. The application was opposed on the ground that the infant was illegitimate. It was not disputed that the will referred only to legitimate children. The question was raised as to whether the evidence of the husband of the married woman would be admitted to prove the illegitimacy of the child:—*Held*, this was not a proceeding instituted in consequence of adultery within s. 3 of 32 & 33 Vict. c. 68, so as to make the husband's evidence admissible to prove non-access to his wife, and, therefore, bastardise the infant (*Re Walker* and *Re Jackson* (1885), 53 L. T. 660).

But where an order had been made under the Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), s. 4, authorising a wife to refuse to cohabit with her husband, the presumption of non-access applies from the date of the order as in the case of a judicial separation; and the justices on an application to vary the order on account of the wife's adultery cannot refuse to receive the direct evidence of the husband or the admissions of the wife in proof of the paternity of a child born more than nine months after the separation (*Hetherington v.*

*Hetherington* (1887), 12 P. D. 112 ; 5 L. J. P. D. & A. 78 ; 56 L. T. 533 ; 51 J. P. 307).

On a summons for maintenance of children against the father, who denied the paternity, his wife having been living apart during their birth, evidence of non-access was given, and P. was allowed as a witness to disprove an alleged admission by him of paternity to which another witness testified, but the justices on consideration struck out the father's evidence, as they said there was sufficient evidence of non-access to disprove paternity without the father's evidence :—*Held*, that the evidence of the father was not admissible to contradict evidence given by other witnesses as to the father's admission of paternity (*Ulverstone Union v. Park* (1889), 53 J. P. 629).

A husband and wife were married on April 30th, 1878, and there were three children born before the marriage was dissolved by reason of the wife's adultery with W. The decree *nisi* was made on November 3rd, 1886, and it was made absolute on May 17th, 1887. The three children were born respectively on July 2nd, 1881, April 26th, 1885, and June 25th, 1886. The legitimacy of the eldest child was admitted. That of the other two was disputed :—*Held (inter alia)*, that notwithstanding the provision of s. 3 of the Act 32 & 33 Vict. c. 68, that the evidence of a husband or wife is admissible in a proceeding instituted in consequence of adultery, the evidence of a husband is not admissible, after the dissolution of the marriage on the ground of the wife's adultery, to prove the illegitimacy of a child born in wedlock (*Burnaby v. Baillie* (1889), 42 Ch. D. 282 ; 58 L. J. Ch. 342 ; 61 L. T. (N.S.) 634 ; 38 W. R. 125).

The question of non-access is a question of fact for the justices.

In an affiliation case where the mother of the bastard is a married woman it is a question for the justices, upon the evidence before them, whether there was non-access by the husband so as to justify them in making an order on the putative father of the child. Where the justices come to the conclusion of non-access irrespective of the evidence of the mother of the child on this point, the court, holding the justices were the proper tribunal to determine the question of paternity under such circumstances, affirmed the order on the putative father which they had made (*Yates v. Chippendale* (1862), 26 J. P. 182).

## SETTLEMENT OF ILLEGITIMATE CHILDREN.

As far back as the year 1576 it was recited by the statute 18 Eliz. c. 3, concerning bastards that they were left to be kept at the charges of the parish where they were born ; and in a case between the townships of Tewkesbury and Twining, at the Gloucestershire Assizes, on July 9th, 1632, Sir WILLIAM JONES, J., recognised the general rule that the child is to be kept by the parish where it is born. Then in the leading case of *Whitechapel v. Stepney* (1689), Cart. 433, it was agreed by all the judges that the birth of a bastard child gained a settlement for that child, to which may be added that such child retained that settlement until it acquired another in its own right. Another settlement in its own right might be acquired by a bastard child at any time by any of the various modes then possible, whereof the following are still in existence, viz., in the case of a female by marriage, and whether a male or female by renting a tenement, by payment of rates, by apprenticeship, or by estate. But the general rule as to *prima facie* settlement of a bastard child was that it was settled where born, and as will be shown later on this general rule of the old law is still applicable in cases where the mother of a bastard child has no settlement, or no settlement can be ascertained. See *Rex v. Bennett* (1831), 2 B. & Ad. 712. This rule was firmly established before the passing of the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), and followed in the decisions given in *Rex v. Spitalfields* (1700), 1 Ld. Raym. 567 ; *Rex v. Hulton* (1742), Burr. S. C. 187 ; *Rex v. Wyke* (1746), Burr. S. C. 264 ; *Darlington v. Hemlington* (1787), 2 Bott. P. L. 7 ; *Rex v. Astley* (1785), 2 Bott. P. L. 8 ; *Rex v. Lubbenham* (1791), 4 T. R. 251 ; *Rex v. Mathon* (1797), 7 T. R. 362 ; *Rex v. Halifax* (1832), 2 B. & Ad. 211 ; *Rex v. Bennett* (1831), 2 B. & Ad. 712 ; *Rex v. Mathersey* (1832), 4 B. & Ad. 211. It applies even to a bastard whose parents were reputed man and wife though not really so (*Rex v. St. Peter's in Worcestershire* (1735), Burr. S. C. 25).

The next point to be considered is s. 71 of the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), which enacts "Every child

which shall be born a bastard after the passing of this Act shall have and follow the settlement of the mother of such child until such child shall attain the age of sixteen or shall acquire a settlement in its own right. . . .”

This enactment is not retrospective, and it has, therefore, no application to bastards born before August 14th, 1834, the date of the passing of the Act (*R. v. Wendron* (1838), 7 A. & E. 819; 3 N. & P. 62; 7 L. J. M. C. 22). This point is, however, now but of little practical importance. It has also no application where the mother has no settlement, or no settlement that can be ascertained, and it has been so decided in *Rex v. Mile End Old Town* (1835), 4 A. & E. 196; 5 L. J. M. C. 42.

Where it does apply, the statute says the bastard “shall have and follow the settlement of the mother.” Consequently, a bastard not only takes the settlement of the mother at the time of its birth, but followed all the changes in her settlement until it attained the age of sixteen, or acquired a settlement in its own right. Thus it has been held that where the mother of a bastard to whom that section applied acquired a settlement in its own right, the settlement of the bastard followed the mother and became the same as that which the mother acquired by her marriage (*R. v. St. Mary, Newington* (1853), 4 Q. B. 581; 12 L. J. M. C. 68; 9 J. P. 321).

The words of the section “until such child shall attain the age of sixteen or shall acquire a settlement in its own right,” have given rise to a number of decisions. It has been decided where the child has attained the age of sixteen without acquiring a settlement in its own right, it ceases to have or follow the settlement of its mother, but is thrown back upon its own birth settlement (*Bodenham v. St. Andrews, Worcester* (1853), 1 E. & B. 465; 22 L. J. M. C. 29; 20 L. T. 208; 17 J. P. 360; 17 Jur. 206).

This case is, however, overruled by the decision in *Reigate v. Croydon* (1889), 14 App. Cas. 464, which will be dealt with subsequently.

Until, however, the child attained that age or acquired a settlement in its own right before that age, it had and followed the settlement of the mother, although she died before the child attained that age or acquired a settlement in its own right (*R. v. Sutton-under-Brailles* (1856), 5 E. & B. 814; 25 L. J. M. C. 57; 26 L. T. 198;

2 Jur. (N.S.) 210). It was thought that a child might acquire a settlement in its own right before attaining the age of sixteen, and that in such case a settlement so acquired would displace at once the settlement derived from the mother. This was so held in *R. v. Leeds Union* (1878), 4 Q. B. D. 323 ; but that case, though followed in many subsequent cases, was disapproved of in the judgment of the House of Lords in the *Guardians of the Poor of West Ham Union v. Churchwardens, etc. of St. Matthew, Bethnal Green*, [1894] A. C. 230.

The effect, therefore, of this section as to the settlement of illegitimate children was to assimilate the condition of bastards under the age of sixteen to that of legitimate unemancipated children who had and followed the settlement of the head of the family, *i.e.*, of their father or widowed mother, as the case might be. There remained, however, a difference between bastards under the age of sixteen, to whom the Act applies, and unemancipated legitimate children, that upon the marriage of a mother of a bastard under sixteen, the bastard, if it had not acquired a settlement in its own right, followed the change in the settlement of the mother which was occasioned by her marriage. But upon the re-marriage of the widowed mother of legitimate unemancipated children, those children did not follow the change in the settlement of their mother which was occasioned by her marriage, because she thereby ceased to be the head of her own family, and became a part of her second husband's family.

The other difference which was insisted on in the case of *Bodenham v. St. Andrew's, Worcester, supra*, that a bastard who had attained the age of sixteen without having acquired a settlement in its own right, was deemed to be settled where it was born, whereas an unemancipated legitimate child who had not gained a settlement for itself, retained its parentage settlement, has, as has been pointed out, been removed by the decision in *Reigate v. Croydon* (1889), 14 App. Cas. 464.

The next alteration in the law relating to the settlement of illegitimate children was effected by s. 35 of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61).

By that section it was enacted that : (1) "No person shall be deemed to have derived a settlement from any other person whether by parentage, estate, or otherwise," subject to certain exceptions in

favour of married women and legitimate children. (2) "An illegitimate child shall retain the settlement of its mother until such child acquires another settlement." (3) "If any child in this section mentioned shall not have acquired a settlement for itself, or being a female shall not have derived a settlement from her husband, and it cannot be shown what settlement such child or female derived from the parent without inquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born."

After these enactments there is a number of conflicting decisions which can only be dealt with by applying the rules laid down in the leading case on the construction of these statutes (*Reigate v. Croydon* (1889), 14 App. Cas. 464 ; 59 L. J. M. C. 29 ; 61 L. T. (N.S.) 133 ; 53 J. P. 580 ; 38 W. R. 295).

With regard to the first clause of s. 35 of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), it should be observed that before the passing of the Act an illegitimate child could only derive a settlement from another person in two ways, viz., from its mother by virtue of s. 71 of the Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), or, being a female, from her husband by marriage. It may be taken for granted that s. 35 of the later Act does not entirely repeal s. 71 of the earlier Act. See the judgments of LINDLEY and BOWEN, L.JJ., in *Northwich v. St. Pancras* (1888), 22 Q. B. D. 164. So that a derivative settlement of an illegitimate child under sixteen from its mother remains unaffected by the first part of the clause, and the derivative settlement from her husband of an illegitimate female child comes within the special exception in the second part of the first clause.

With regard to the second clause, this clause, according to the judgments in *Reigate v. Croydon*, simply has the effect of giving to a bastard child the privilege of retaining, even after the age of sixteen, its settlement derived from its mother until the acquisition of a settlement in its own right, overruling, as has been pointed out, the decision in *Bodenham v. St. Andrew, Worcester*.

With regard to the third clause, this clause, according to the judgments in *Reigate v. Croydon*, has no application to children under the age of sixteen, whether legitimate or illegitimate.

The cases decided between the passing of the Acts of 1876 and 1889, the date of the judgment in *Reigate v. Croydon*, can now be discussed by the light of the decision in that case.

The first case is *Tenterden v. St. Mary, Islington* (1878), 47 L. J. M. C. 81 ; 38 L. T. (N.S.) 485. It was there held that the second clause of s. 35 of the Divided Parishes and Poor Law Act, 1876, had no application to the case of an illegitimate child who had attained the age of sixteen before the passing of the Act. This case is obviously unaffected by the judgments in *Reigate v. Croydon*, and is still good law.

The next case is *Manchester v. St. Pancras* (1879), 4 Q. B. D. 409 ; 41 L. T. (N.S.) 218 ; 27 W. R. 885. It was there held that the bastard child of a divorced woman under the age of sixteen after the passing of the Act did not take the settlement of its mother, that settlement being, as regards the mother, derived before the passing of the Act, and before the birth of the child, by marriage from her divorced husband. The decision proceeded entirely upon the ground that the third clause of s. 35 of the Divided Parishes and Poor Law Amendment Act, 1876, was applicable in the case of a child under sixteen ; but, as has been pointed out in *Reigate v. Croydon*, such is not the case, so that this case may be regarded as overruled.

The next case is *R. v. Portsea Union* (1881), 7 Q. B. D. 384 ; 50 L. J. M. C. 144 ; 45 J. P. 160. The decision there, except so far as it proceeded upon the authority of *Manchester v. St. Pancras*, turned upon the question of the retrospective operation of the third clause of s. 35 of the Divided Parishes and Poor Law Act, 1876. So far, therefore, as it proceeded upon the authority of *Manchester v. St. Pancras*, it may be deemed to be overruled. As to the other point, it was distinguished from *Tenterden v. St. Mary, Islington*, because the bastard child did not attain the age of sixteen until after the passing of that Act.

Then came the case of *Salford v. Manchester* (1882), 10 Q. B. D. 172 ; 52 L. J. Q. B. 34 ; 48 L. T. (N.S.) 119 ; 47 J. P. 119 ; 35 W. R. 380. That was a question as to the settlement of an illegitimate child, an idiot from her birth, whose mother married before the child attained the age of sixteen, but the child, after attaining that age, which

happened before the passing of the Act of 1876, continued to reside with her mother and her mother's husband for three years without receiving relief. Upon the authority of *Tenterden v. St. Mary, Islington*, s. 35 of the Act of 1876 was not applicable. The sole question was whether the fact of being an idiot and residing with the mother and being supported by her after attaining the age of sixteen, prevented the pauper acquiring a settlement under s. 34 of the Act of 1876. It was held this was not so, but the pauper had acquired a settlement in her own right. The judgment was based on the decision in *R. v. Leeds Union*, which, as has been pointed out, has been dissented from in the case of *West Ham v. Bethnal Green*, and it must, therefore, be regarded as overruled.

The next case is *Wycombe v. St. Marylebone* (1884), 13 Q. B. D. 15 ; 53 L. J. M. C. 58 ; 50 L. T. (N.S.) 442 ; 48 J. P. 566. The decision there proceeded entirely upon the ground that the third clause of s. 35 of the Act of 1876 was applicable to the case of children under sixteen. It may, therefore, be regarded as overruled by the judgments in *Reigate v. Croydon*.

Precisely similar is the decision in the last case, *Northwich v. St. Pancras* (1888), 22 Q. B. D. 164 ; 58 L. J. M. C. 73 ; 60 L. T. 444 ; 53 J. P. 196 ; 37 W. R. 206, and it may, for the same reason, be considered as overruled.

Then followed the case of the *Manchester Union v. Ormskirk Union* (1890), 24 Q. B. D. 678, which also decided that under s. 35 of the Divided Parishes and Poor Law Act, 1876, an illegitimate, like a legitimate child, cannot gain a settlement for itself while under the age of sixteen, but must follow the settlement of its mother. This was decided under a mistaken view of the decision in *Reigate v. Croydon*, *ante*. Probably the reason was that the court seems to have treated as law an admission made by counsel for the respondents in the course of his argument that a legitimate child under the age of sixteen could not under any circumstances have acquired a settlement in its own right. At most it could only have been an admission that a legitimate child under the age of sixteen, having a mother living who had a settlement in her own right, could not acquire a settlement. Even so, it would not have been good law. But Lord COLERIDGE, C.J., founded his judgment upon it. He said : "It is admitted by the respondents there would be nothing to be said on

their behalf if the pauper were under sixteen, and were legitimate ; it must in that case take its parentage settlement—that of its father or mother.” Then, starting from this false premise, he reasoned that the decision of the House of Lords was intended to assimilate the position of legitimate and illegitimate children. So it was ; but their position was already similar in respect of acquiring settlements in their own right whilst under the age of sixteen. The necessity for assimilation only arose in regard to retaining of parentage settlement by children over sixteen. Overlooking this, the Lord Chief Justice went on : “The interpretation placed upon the statute is, that a legitimate child under the age of sixteen shall not be capable of acquiring a settlement for itself.” No such interpretation was ever placed upon the statute, and this decision has been disapproved of and not followed in the case of the *West Ham Union v. Holbeach Union*, discussed below.

Then came the case of the *Guardians of the Poor of West Ham v. Churchwardens, etc. of St. Matthew's, Bethnal Green*, [1894] A. C. 230, which expressly dissented from the judgment in *R. v. Leeds Union*, *ante*. There, in 1879, the pauper, a few days before she attained the age of fourteen, went into domestic service in the parish of Low Leyton, in the West Ham Union. She remained there nearly four years. After that time she resided for the most part with her widowed mother, but was occasionally in service in places outside the West Ham Union. The widowed mother of the pauper never resided in or acquired a status of irremovability from or a settlement in the West Ham Union. The father died when the pauper was two years of age. It was held that the pauper had not acquired a settlement in West Ham. A child cannot therefore acquire a settlement of its own (apart, of course, from the marriage of a female child) under the age of sixteen. The cases of *R. v. Leeds Union* and the cases which followed it (*Salford v. Manchester*, *ante* ; *Holborn v. Chertsey* (1884), 14 Q. B. D. 289 ; and *R. v. St. Olave's Union* (1873), L. R. 9 Q. B. 38), must be considered as overruled.

Finally, we have to consider the case of the *West Ham Union v. Holbeach Union*, [1903] 2 K. B. 627 ; 66 J. P. 346. The head-note of this case might, unless carefully read, be misleading. It says : “A child under sixteen, whether legitimate or illegitimate, may while residing with its parents acquire a settlement for itself under s. 34 of the Divided Parishes Act, 1876, and does not necessarily

derive its settlement from its parent." The facts must be stated to understand the decision. George Ernest Neep, the pauper, was the illegitimate child of Emma Neep, and was born in the Holbeach Union Workhouse on October 25th, 1899. Emma Neep, the mother of the pauper, was the illegitimate child of Mary Ann Neep, and was born in the parish of Tilney St. Lawrence on April 11th, 1879. Mary Ann Neep married Alfred Chapman at Tilney St. Lawrence on December 23rd, 1881. From June 27th, 1890, to September 7th, 1893, Alfred Chapman resided in the parish of West Ham, in the West Ham Union, with his wife under such circumstances as to give him a settlement there. From September 7th, 1893, Alfred Frederick Chapman continued to reside there in receipt of relief till his death on September 8th, 1894. From that date Mary Ann Chapman (his wife) continued to reside there till November 26th, 1895, when she ceased to reside in the West Ham Union, and died in the Poplar Union Infirmary on October 14th, 1896. From June 27th, 1890, to July 28th, 1893, Emma Neep resided with Alfred Chapman and her mother in the parish of West Ham, in the West Ham Union (being all that time under sixteen years of age). She then went into service and had no settled residence. In December, 1901, an order of the justices was obtained on behalf of the respondents alleging the pauper to be settled in the West Ham Union (the appellants). The appellants argued that the settlement of Emma Neep could not be ascertained without inquiring into the derivative settlement of her parent, and that she must be deemed to be settled in the parish of Tilney St. Lawrence, where she was born. The court held in favour of the respondents, that Emma Neep had acquired a settlement in her own right though living with her parents in West Ham while she was under the age of sixteen, and did not derive it from her parents. The proposition of law is this : If a child resides with its parents for the necessary term to obtain a settlement, if the parent dies having acquired no other settlement, the settlement of the child by residence is deemed to be a settlement in its own right, and not one derived from the parent. The court decided this on the authority of *R. v. Elvet* (1859), 2 El. & El. 266, which held that a child under sixteen could acquire a status of irremovability. Bearing in mind the principles enumerated in these cases, the conclusion, therefore, seems to be this : Where the mother of a bastard child has a settlement, whether derivative or not, at the time of the

birth of the child, the child takes that settlement. And further, if subsequently, before the child attains the age of sixteen, or, being a female, acquires a settlement by marriage, the settlement of the mother changes, whether by virtue of her acquiring a new settlement in her own right or by marriage, the settlement of the child changes likewise, and follows that of the mother. As to this last proposition, there seems to be still a difference between legitimate and illegitimate children. On the re-marriage of the mother of legitimate children under sixteen they do not take the settlement of the mother which she acquires from her second marriage ; but the bastard child of a woman who subsequently acquires a settlement by marriage does take that settlement if it is under sixteen, and has not, being a female, acquired a settlement by marriage. Further, if a child resides with its parent under such circumstances as are necessary to gain a settlement, such child is deemed to have acquired a settlement of its own, and not to have derived such settlement from its parent.

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## ISSUE OF SUMMONS AND EXECUTION OF WARRANTS IN BASTARDY OUT OF THE JURISDICTION.

The Bastardy Acts, as has been seen, apply only to England and Wales ; but the question may arise, first, as to the remedy a woman may have who has given birth to a bastard child in England, the putative father of the child being resident out of England and Wales. If the putative father is resident in Scotland, a special remedy has been given to the woman under the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24), s. 6, which provides : " A court of summary jurisdiction in England and a sheriff court in Scotland shall respectively have jurisdiction by order or decree to adjudge a person within the jurisdiction of the court to pay for the maintenance and education of a bastard child of which he is the putative father, and for the expenses incidental to the birth of such child, and for the funeral expenses of such child, notwithstanding that such person ordinarily resides, or the child has been born, or the mother of it ordinarily resides, where the court is English, in Scotland, or where the court is Scotch, in England, in like manner as the court has jurisdiction in any other case. Any process issued in England or Scotland to enforce obedience to such order or decree may be endorsed and executed in Scotland and England respectively in manner provided by this Act with respect to process of a court of summary jurisdiction. Any bastardy order of a court of summary jurisdiction in England may be registered in the books of a sheriff court in Scotland, and thereupon a warrant of arrestment may be issued in like manner as if such order were a decree of the said sheriff court."

In the first place, it may be observed as to this Act that it does not authorise a bastardy summons issued from a place in England to be served on the putative father in Scotland, or *vice versa*. This was decided in the case of *Berkley v. Thompson*, 10 App. Cas. 45 ; 54 L. J. 57 ; 49 J. P. 276 ; 33 W. R. 525.

It, therefore, only applies when a bastardy order has been properly made upon the putative father.

In the case of a man resident within the jurisdiction of the English court, but who has subsequently become resident in Scotland, where it is sought to enforce payment under it against him in that country, BRETT, M.R., in his judgment in the Court of Appeal in the same case of *Berkley v. Thompson*, reported *sub nom. R. v. Thompson*, 12 Q. B. D. 261, says: "When an order in the matter of bastardy has been properly made by justices in England there is power given in that last Act (*viz.*, Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24)) to follow the person with it into Scotland, but none of the sections seem to me to go beyond that. The legislature, as I think, never meant to give the woman the power of bringing the person charged with being the father of her illegitimate child from one part of the United Kingdom to the other, and to place in her hand so formidable a weapon for making such a charge."

If, therefore, a woman resident in England wishes to obtain an allowance for her bastard child, born in England, against the putative father, resident in Scotland, she must bring her action of aliment in the sheriff's court in Scotland according to the laws of that country. A warrant issued by an English court of summary jurisdiction can be served in Scotland if endorsed according to the provisions of s. 4 of the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24), which enacts: "Any process issued under the Summary Jurisdiction Acts may, if issued by a court of summary jurisdiction in England and endorsed by a court of summary jurisdiction in Scotland, or issued by a court of summary jurisdiction in Scotland and endorsed by a court of summary jurisdiction in England, be served and executed within the jurisdiction of the endorsing court in like manner as it may be served and executed within the jurisdiction of the issuing court, and that by an officer either of the issuing or of the endorsing court."

So far, therefore, as regards the enforcement in Scotland of warrants for non-payment of arrears under a bastardy order made in England or Wales the procedure is fairly clear, as the provisions of the Summary Jurisdiction (Process) Act, 1881, and the judgments in *Berkley v. Thompson*, *supra*, are guides in the matter. But this last does not, by express enactment (s. 2), apply to Ireland, and, also, not to the Channel Islands or the Isle of Man.

In considering, therefore, the question with regard to other places outside England and Wales a different set of considerations has to be taken into account. This much, however, may be confidently stated that no summons in bastardy can be served out of England or Wales, for if this cannot be done in Scotland, as has been decided by the case of *Berkley v. Thompson*, *supra*, where the Summary Jurisdiction (Process) Act, 1881, was the foundation of the main argument as to its legality, it certainly cannot be done in other countries.

As to the execution out of England or Wales of a warrant for the non-payment of arrears under a bastardy order we have to consider various provisions of the Summary Jurisdiction Acts. In considering this question it is as well to remark the words of Lord SELBORNE, L.C., in *Berkley v. Thompson*: "Bastardy law is one thing and the Summary Jurisdiction Acts are another, and this being a case of bastardy we shall have to consider the bastardy law in the first case, then, if necessary, the application to that law of the Summary Jurisdiction Acts afterwards."

By s. 35 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), it was enacted that nothing in that Act should extend or be construed to extend to "any complaints, orders, or warrants in matters of bastardy made against the putative father of any bastard child, save and except such of the provisions aforesaid as relate to the backing of warrants for compelling the appearance of such putative father or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for non-payment of the same." The provisions as to backing of the warrants in question will be found in ss. 11—15 of the same Act, which may be summarised thus: If a person against whom a warrant has been issued shall not be found within the jurisdiction of the justice by whom such warrant shall have been issued, it provides that a justice within whose jurisdiction such person shall be, shall back the warrant by making an endorsement on the back in a form given by the Act, which warrant so endorsed shall be a sufficient authority for the apprehension of the person named therein. Then follow provisos as the backing of English warrants in Ireland and *vice versâ*, in the event of parties escaping, and also with regard to the Isle of Man and the Channel Islands, and the backing of Scotch warrants in England or Ireland. If, therefore, a

warrant can be issued by a justice in England in order to be served on a putative father residing out of England or Wales these provisions apply, but the question as to the power to issue such warrant must be first decided. Section 54 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), must, therefore, be considered. That section enacts that "This Act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for non-payment of such sums, in like manner as if an order in any such matter or so enforceable were a conviction on information, and shall apply to the proof of the service of any summons, notice, process, or document in any matter of bastardy, and of any handwriting or seal in any such matter, and to an appeal from any order in any matter of bastardy." The power to issue warrants in bastardy for the arrest of a defendant who may be in arrear of payments due under a bastardy order, and to commit to prison for any term not exceeding three calendar months in default of payment, is given by s. 4 of the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 4.

The question is therefore this, can a warrant to enforce an order in bastardy be brought within the words of s. 54 of the Summary Jurisdiction Act, 1879, already quoted? By that section the levying of sums adjudged to be paid by any order in any matter of bastardy, or by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for non-payment of such sums in like manner as if it were a conviction on information, that is to say the payment is not to be treated as a civil debt and the Act is to be construed as one with the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), so far as is consistent with the tenour of such Acts respectively. If, therefore, a warrant issued in bastardy is included in the words "proof of service of any summons, notice, process, or document in any matter of bastardy, or of any handwriting or seal in any such matter," it comes within the words of s. 35 of the Summary Jurisdiction Act of 1848, which extends the provisions of that Act as to the backing of warrants for compelling the appearance of such putative father, or warrants of distress, or to the levying of sums ordered to be paid, or to the imprisonment of a defendant for non-payment of the same. There is no direct authority on the point. *Berkley v. Thompson*, as has been pointed out, refers only to

the case of a summons, but there is a passage in the judgment of the Earl of SELBORNE, L.C., in 10 App. Cas. on p. 49, which seems to point to the fact that there is a difference between the issuing of a summons, and the issue of a warrant to enforce obedience to an order, already made. Section 54 of the Summary Jurisdiction Act of 1879 shows that in order to bring bastardy cases within the purview of the Act, the legislature thought fit to make special provision, and it made that provision, not by applying the Act in all points and for all purposes as to matters of process and otherwise to bastardy cases, but by applying the Act in a limited and special way. "This Act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for non-payment of such sums," that is, the 21st section. which deals with these matters shall be capable of application to steps which may be taken after an order in bastardy is made, and not to the exercise of jurisdiction to make that order. In 60 J. P., at p. 267, will be found a letter from the Home Office, which clearly indicates that the authorities there are of the opinion that a warrant issued in England for non-payment of arrears in bastardy, can be executed in Ireland, if the provisions of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), as to the backing of warrants, is conformed to.

On the other hand it may be argued that if there was no difficulty with regard to the execution of warrants for non-compliance with a bastardy order out of England or Wales, it is remarkable that special legislation should have been passed to enable such warrant to be put in force in Scotland as has been enacted by the Summary Jurisdiction (Process) Act, 1881 (44 & 45 Vict. c. 24), s. 6.

The question has not been decided by judicial authority, and must, therefore, remain more or less an open one, but on the whole the weight of opinion, having regard to the letter of the Home Office, quoted in 60 J. P. 267, seems to be that such warrants can be enforced if backed according to the provisions of s. 3 of the Summary Jurisdiction Act, 1848.

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## APPENDIX.

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### POOR LAW AMENDMENT ACT, 1834.

(4 & 5 WILL. 4, C. 76.)

*An Act for the Amendment and better Administration of the  
Laws relating to the Poor in England and Wales.*

[14th August 1834.]

\* \* \* \* \*

71. Every child which shall be born a bastard after the passing of this Act shall have and follow the settlement of the mother of such child until such child shall attain the age of sixteen or shall acquire a settlement in its own right, and such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family until such child shall attain the age of sixteen; and all relief granted to such child while under the age of sixteen shall be considered as granted to such mother: Provided always, that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female.

\* \* \* \* \*

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## BIRTHS AND DEATHS REGISTRATION ACT, 1874.

(37 &amp; 38 VICT. c. 88.)

*An Act to amend the law relating to the Registration of Births and Deaths in England, and to consolidate the law respecting the Registration of Births and Deaths at Sea.*

[7th August 1874.]

\* \* \* \* \*

7. In the case of an illegitimate child no person shall, as father of such child, be required to give information under this Act concerning the birth of such child, and the registrar shall not enter in the register the name of any person as father of such child, unless at the joint request of the mother and of the person acknowledging himself to be the father of such child, and such person shall in such case sign the register, together with the mother.

## SUMMARY JURISDICTION ACT, 1879.

(42 &amp; 43 VICT. c. 49.)

*An Act to amend the Law relating to the Summary Jurisdiction of Magistrates.*

[11th August 1879.]

\* \* \* \* \*

## PART II.

*Amendment of Procedure.*

31. Where any person is authorised . . . . to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter

sessions, he may appeal to such court, subject to the conditions and regulations following :

- (1) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county borough or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded ; and
- (2) The appellant shall, within the prescribed time, or if no time is prescribed within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party and on the clerk of the said court of summary jurisdiction notice in writing of his intention to appeal, and of the general grounds of such appeal ; and
- (3) The appellant shall, within the prescribed time, or if no time is prescribed within three days after the day on which he gave notice of appeal, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the Court of Appeal thereon, and to pay such costs as may be awarded by the Court of Appeal, or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognizance think it expedient, instead of entering into a recognizance, give such other security, by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deem sufficient ; and

- (4) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognizance may, if the court think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and
- (5) The Court of Appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction or remit the matter, with the opinion of the Court of Appeal thereon to a court of summary jurisdiction acting for the same county borough or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the Court of Appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The Court of Appeal may also make such order as to costs to be paid by either party as the court may think just; and
- (6) Whenever a decision is not confirmed by the Court of Appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also indorse on the conviction or order appealed against, a memorandum of the decision of the Court of Appeal, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certifi-

cate would be sufficient evidence of such conviction or order; and

- (7) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

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## THE BASTARDY ORDERS ACT, 1880.

(43 & 44 VICT. c. 32.)

*An Act to render valid certain Orders in Bastardy.*

[26th August 1880.]

WHEREAS by the Bastardy Laws Amendment Act, 1873, it was enacted that the Local Government Board might issue such new or altered forms of proceedings in matters of bastardy as they should deem necessary or expedient for giving effect to the provisions of that Act and the Bastardy Laws Amendment Act, 1872; and the said Board issued certain forms accordingly:

And whereas many orders in bastardy have been made which are not in accordance with the forms so issued, or to the like tenor or effect, and in particular the words "for the maintenance and education of the said child" have been omitted from the said orders, and questions have in consequence arisen as to the validity of the same:

Be it, therefore, enacted as follows:

1. An order so made as aforesaid before the passing of this Act shall not be, or deemed to be, invalid by reason of the omission from such order of the words "for the

maintenance and education of the said child," or words to the like tenor or effect.

2. This Act may be cited as the Bastardy Orders Act, 1880.

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THE SUMMARY JURISDICTION (PROCESS)  
ACT, 1881.

(44 & 45 VICT. c. 23.)

*An Act to amend the Law respecting the Service of Process  
of Courts of Summary Jurisdiction in England and  
Scotland.* [18th July 1881.]

\* \* \* \* \*

6. A court of summary jurisdiction in England and a sheriff court in Scotland shall respectively have jurisdiction by order or decree to adjudge a person within the jurisdiction of the court to pay for the maintenance and education of a bastard child of which he is the putative father, and for the expenses incidental to the birth of such child, and for the funeral expenses of such child, notwithstanding that such person ordinarily resides, or the child has been born, or the mother of it ordinarily resides, where the court is English, in Scotland, or where the court is Scotch, in England, in like manner as the court has jurisdiction in any other case.

Any process issued in England or Scotland to enforce obedience to such order or decree may be endorsed and executed in Scotland and England respectively in manner provided by this Act with respect to process of a court of summary jurisdiction.

Any bastardy order of a court of summary jurisdiction in England may be registered in the books of a sheriff court in Scotland, and thereupon a warrant of arrestment may be issued in like manner as if such order were a decree of the said sheriff court.

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# FORMS

PREScribed BY THE LOCAL GOVERNMENT BOARD FOR PROCEEDINGS  
UNDER THE BASTARDY ACT, DATED 4TH AUGUST, 1873, AND  
8TH JANUARY, 1874.

*As to the use of these Forms, see note to Bastardy Laws Amendment  
Act, 1873 (36 Vict. c. 9), s. 6, ante, p. 69.*

## GENERAL ORDER.

### FORMS FOR PROCEEDINGS UNDER BASTARDY ACTS ON THE MOTHER'S APPLICATION.

To the Justices of the Peace in England and Wales ;  
And to all others whom it may concern ;

Whereas it is enacted by "The Bastardy Laws Amendment Act, 1873," that the Local Government Board may issue such new or altered forms of proceedings in matters of bastardy as they shall deem necessary or expedient for giving effect to the provisions of that Act and of "The Bastardy Laws Amendment Act, 1872."

Now therefore, we, the Local Government Board, in pursuance of the authority so conferred upon us, do hereby issue the Forms set forth in the Schedules hereto annexed.

## SCHEDULE A. (a).

### No. 1.

#### Form of Application by Woman with Child.

to wit.        } APPLICATION and deposition of        a single woman  
                  } residing at        in the county (a) of        taken upon  
oath before me, the undersigned        one of Her Majesty's justices  
of the peace acting for the (a) petty sessional division of        in the  
said county of        in which she resides, this        day of        in

(a) N.B.—These forms, properly revised and arranged for use, may be purchased at 3s. per quire, 48 forms to the quire, from the publishers of this Work.

the year of our Lord one thousand eight hundred and      who  
upon her *oath* (b) saith that she is now with child, and that  
of      in the (a) county of      is the father of the child with  
which she is now pregnant, and maketh application for a summons  
to be served upon the said      so alleged by her to be the father of  
the said child, to appear at a petty session to be holden after the  
birth of such child for the *petty sessional division* (a)      of  
in which I usually act, to answer such complaint as she shall then  
and there make touching the premises.

Exhibited and *sworn* before, the day }  
and year first above written. }

(a) *Or city, borough, or other place.*

(b) *Or affirmation.*

#### No. 2.

#### Form of Summons on Application by Woman with Child.

to wit. } To      of the parish of      in the county of      .

Whereas an application hath been made to me, the undersigned,  
one of her Majesty's justices of the peace for the (a) *county* of  
by      , single woman, residing at      in the (a) *petty sessional*  
*division of the said county* for which I act, now with child, of which  
child she hath this day duly *sworn on oath* (b) before me the said  
justice that you are the father, for a summons to be served on you  
to appear at a petty session, according to the form of the statute in  
such case made and provided.

These are, therefore, to require you to appear at the petty session  
of the justices holden at      , being the petty session for the  
*division* (a)      in which I usually act, on (c)      the      day  
of      at      of the clock in the      noon, in the year of our  
Lord, one thousand eight hundred and      , to answer any com-  
plaint which she shall then and there make against you touching  
the premises.

Herein fail you not.

Given under my hand at      in the *county* (a)  
this      day of      in the year of our Lord one  
thousand eight hundred and      .

*Note.*—If you neglect to appear at the petty session as above  
stated, the justices, upon proof that this summons has been duly

served upon you, or left at your last place of abode, may proceed, if they think fit, to make an order upon you, as the putative father of the child above referred to, to pay a weekly sum, to the said mother for its maintenance, and other sums for costs and expenses.

(a) *Or city, borough, or other place.*

(b) *Or affirmed.*

(c) *Insert some day when the petty session will be held after the birth of the child, and at such a distance of time that six days at least may elapse after the issuing of the summons, and the service on the man, or at his place of abode, before the petty session.*

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No. 3.

**Application for a Summons by a Woman after Birth.**

to wit. } THE information and application of \_\_\_\_\_, single  
 } woman, residing at \_\_\_\_\_ in the county of \_\_\_\_\_,  
 before me, the undersigned \_\_\_\_\_ one of her Majesty's justices of  
 the peace acting for the (a) *petty sessional division of \_\_\_\_\_ in the said*  
*county of \_\_\_\_\_ in which she resides, this \_\_\_\_\_ day of \_\_\_\_\_ in the*  
*year of our Lord one thousand eight hundred and \_\_\_\_\_ who saith*  
*that she hath been delivered of a bastard child within twelve*  
*calendar months before this day, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_*  
*in the year of our Lord one thousand eight hundred and \_\_\_\_\_ and*  
*alleges that one \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ is the father*  
*of such child, and maketh application to me for a summons to be*  
*served upon the said \_\_\_\_\_ to appear at a petty session to be holden*  
*for the petty sessional division (a) \_\_\_\_\_ in which I usually act, to*  
*answer such complaint as she shall then and there make touching*  
*the premises.*

Exhibited before me, the day and }  
 year first above written. }

(a) *Or city, borough, or other place.*

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## No. 4.

**Summons where the Application is made by Woman  
after Birth.**

to wit. } To            of the parish of            in the county of            .

Whereas application has been this day made to me, the undersigned, one of her Majesty's justices of the peace for the (a) *county* of            by            single woman, residing at            in the (b) *petty sessional division of the said county* for which I act, who hath been delivered of a bastard child within twelve calendar months before this day, and of which bastard child she alleges you to be the father, for a summons to be served upon you to appear at a petty session of the peace, according to the form of the statute in such case made and provided.

These are, therefore, to require you to appear at the petty session of the justices holden at            , being the petty session for the *division* (a)            in which I usually act, on (b)            the            day of            at            of the clock in the            noon in the year of our Lord one thousand eight hundred and            to answer any complaint which she shall then and there make against you touching the premises.

Herein fail you not.

Given under my hand at            in the *county* (a)            this  
day of            in the year of our Lord one thousand  
eight hundred and            .

*Note.*—If you neglect to appear at the petty session as above stated, the justices, upon proof that this summons has been duly served upon you, or left at your last place of abode, may proceed, if they think fit, to make an order upon you, as the putative father of the child above referred to, to pay a weekly sum to the said mother for its maintenance, and other sums for costs and expenses.

(a) *Or city, borough, or other place.*

(b) *Insert some day, at least six days after the date of the summons, and after the day when the same can be served upon the man, or at his place of abode.*

No. 5.

**Application for a Summons by a Woman after Birth, where the alleged Father has paid Money within Twelve Months after the Birth.**

to wit. } The information and application of , single woman, residing at in the county (a) of before me, the undersigned one of her Majesty's justices of the peace acting for the (a) *petty sessional division of in the said county of* in which she resides, this day of in the year of our Lord one thousand eight hundred and who saith that she hath been delivered of a bastard child more than twelve calendar months before this day, to wit, on the day of in the year of our Lord one thousand eight hundred and and alleges that one of in the (a) county of is the father of such child, and having given proof to me that the said did within the twelve calendar months next after the birth of such child pay money for its maintenance, maketh application to me for a summons to be served upon the said to appear at a petty session to be holden for the *petty sessional division (a)* in which I usually act, to answer such complaint as she shall then and there make touching the premises.

Exhibited before me, the day and }  
year first above written.

(a) *Or city, borough, or other place.*

No. 6.

**Summons when the Application is made by a Woman after Birth, where the alleged Father has paid Money within Twelve Months after the Birth.**

to wit. } To of the parish of in the county of .  
Whereas application hath been this day made to me, the undersigned, one of her Majesty's justices of the peace for the (a) county of by single woman, residing at in the (a) *petty sessional divisional of the said county for which I act*, who hath been

delivered of a bastard child more than twelve calendar months before this day, of which bastard child she alleges you to be the father, and for the maintenance whereof she hath given me proof that you did within the twelve calendar months next after its birth pay money for a summons to be served upon you to appear at a petty sessions of the peace according to the form of the statute in such case made and provided.

These are, therefore, to require you to appear at the petty session of the justices holden at , being the petty session for the *division* (a) in which I usually act, on (b) the day of at of the clock in the noon in the year of our Lord one thousand eight hundred and to answer any complaint which she shall then and there make against you touching the premises.

Herein fail you not.

Given under my hand at in the county (a) this day of in the year of our Lord one thousand eight hundred and .

*Note.*—If you neglect to appear at the petty session as above stated, the justices, upon proof that this summons have been duly served upon you, or left at your last place of abode, may proceed, if they think fit, to make an order upon you, as the putative father, of the child above referred to, to pay a weekly sum to the said mother for its maintenance, and other sums for costs and expenses.

(a) *Or city, borough, or other place.*

(b) *Insert some day, at least six days after the date of the summons, and after the day when the same can be served upon the man, or at his place of abode.*

#### No. 7.

#### **Application for a Summons by a Woman after Birth, where the alleged Father has returned after ceasing to reside in England.**

The information and application of , single to wit. } woman, residing at in the county of before me, the undersigned one of her Majesty's justices of the peace acting for the (a) *petty sessional division* of in the said county of in which she resides, this day of in the

year of our Lord one thousand eight hundred and      who saith  
 that she hath been delivered of a bastard child more than twelve  
 calendar months before this day, to wit, on the      day of  
 in the year of our Lord one thousand eight hundred and      and  
 alleges that one      of      in the county of      is the father  
 of such child, and having given proof to me that the said      did  
 within the twelve calendar months next after the birth of such  
 child cease to reside in England and hath returned to England  
 within the twelve calendar months next before this day, maketh  
 application to me for a summons to be served upon the said      to  
 appear at a petty session to be holden for the *petty sessional division*  
 (a)      in which I usually act, to answer such complaint as she  
 shall then and there make touching the premises.

**Exhibited before me, the day and }**  
 year first above written. }

(a) *Or city, borough, or other place.*

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No. 8.

**Summons when Application is made by a Woman after Birth,  
 where the alleged Father has returned after ceasing to  
 reside in England.**

to wit.      } To      of the parish of      in the county of      .

Whereas application hath been this day made to me, the under-  
 signed, one of her Majesty's justices of the peace for the (a) *county*  
 of      by      single woman, residing at      in the (a) *petty*  
*sessional division of the said county* for which I act, who hath been  
 delivered of a bastard child more than twelve calendar months  
 before this day, of which bastard child she alleges you to be the  
 father, and hath given proof to me that you did within the twelve  
 calendar months next after the birth of such child cease to reside in  
 England, and have returned to England within the twelve calendar  
 months next before this day, for a summons to be served upon you  
 to appear at a petty sessions of the peace according to the form of  
 the statute in such case made and provided.

These are, therefore, to require you to appear at the petty session  
 of the justices holden at      , being the petty session for the

*division (a)* in which I usually act, on *(b)* the  
day of at of the clock in the noon in the year  
of our Lord one thousand eight hundred and to answer any  
complaint which she shall then and there make against you touching  
the premisses.

Herein fail you not.

Given under my hand at in the *county (a)*  
this day of in the year of our Lord one  
thousand eight hundred and .

*Note.*—If you neglect to appear at the petty session as above  
stated, the justices, upon proof that this summons has been duly  
served upon you, or left at your last place of abode, may proceed,  
if they think fit, to make an order upon you, as the putative father  
of the child above referred to, to pay a weekly sum to the said  
mother for its maintenance, and other sums for costs and expenses.

*(a) Or city, borough, or other place.*

*(b) Insert some day, at least six days after the date of the summons,  
and after the day when the same can be served upon the man, or at his  
place of abode.*

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No. 9.

**Application for a Summons where the Child was born on  
or before August 10th, 1872.**

to wit. } THE information and application of single  
} woman, residing at in the *county (a)* of  
before me, the undersigned one of her Majesty's justices of  
the peace acting for the *(a) petty sessional division of in the*  
*said county of* in which she resides, this day of  
in the year of our Lord one thousand eight hundred and  
who saith that she was delivered of a bastard child before the  
eleventh day of August one thousand eight hundred and seventy-  
two, to wit, on the day of in the year of our Lord  
one thousand eight hundred and and alleges that one  
of in the *(a) county of* is the father of such child, and  
maketh application to me for a summons to be served upon the  
said to appear at a petty session to be holden for the *petty*

*sessional division (a)* in which I usually act, to answer such complaint as she shall then and there make touching the premises.

Exhibited before me, the day and }  
year first above written.

(a) *Or, city, borough, or other place.*

---

No. 10.

**Summons where the Child was born on or before  
August 10th, 1872.**

to wit. } To of the parish of in the county of .

Whereas application has been this day made to me, the undersigned, one of her Majesty's justices of the peace for the (a) *county* of by single woman, residing at in the (a) *sessional division of the said county* for which I act, who was delivered of a bastard child before the eleventh day of August, one thousand eight hundred and seventy-two, to wit, on the day of in the year of our Lord one thousand eight hundred and and of which bastard child she alleges you to be the father, for a summons to be served upon you to appear at a petty session of the peace, according to the form of the statute in such case made and provided.

These are, therefore, to require you to appear at the petty session of the justices holden at , being the petty session for the *division (a)* in which I usually act, on (b) the day of at of the clock in the noon in the year of our Lord one thousand eight hundred and to answer any complaint which she shall then and there make against you touching the premises.

Herein fail you not.

Given under my hand at in the *county (a)*  
this day of in the year of our Lord one  
thousand eight hundred and .

*Note.*—If you neglect to appear at the petty session as above stated, the justices, upon proof that this summons has been duly

served upon you, or left at your last place of abode, may proceed, if they think fit, to make an order upon you, as the putative father of the child above referred to, to pay a weekly sum to the said mother for its maintenance, and other sums for costs and expenses.

(a) *Or city, borough, or other place.*

(b) *Insert some day, at least six days after the date of the summons, and after the day when the same can be served upon the man, or at his place of abode.*

No. 11.

**Application for a Summons where the Child was born on or before August 10th, 1872, and the alleged Father paid Money within Twelve Months after the Birth.**

                                  } THE information and application of                   single woman  
to wit.                    } residing at                   in the (a) county of                   before me  
the undersigned                   one of her Majesty's justices of the peace  
acting for the (a) *petty sessional division of*                   in the said county  
of                   in which she resides, this                   day of                   in the year of  
our Lord one thousand eight hundred and                   who saith that she  
was delivered of a bastard child before the eleventh day of August,  
one thousand eight hundred and seventy-two, to wit, on the  
day of                   in the year of our Lord one thousand eight hundred  
and                   and alleges that one                   of                   in the county (a) of  
                                  is the father of such child, and having given proof to me that  
the said                   did within the twelve calendar months next after the  
birth of such child pay money for its maintenance, maketh applica-  
tion to me for a summons to be served upon the said                   to appear  
at a petty session to be holden for the *petty sessional division (a)*  
in which I usually act, to answer such complaint as she shall then  
and there make touching the premises.

Exhibited before me, the day }  
and year first above written. }

(a) *Or city, borough, or other place.*

## No. 12.

**Summons where the Child was born on or before August 10th, 1872, and the alleged Father paid Money within Twelve Months after the Birth.**

to wit. } To            of the parish of            in the county of            .  
Whereas application hath been this day made to me, the undersigned, one of her Majesty's justices of the peace for the (a) *county* of            by            single woman, residing at            in the (a) *petty sessional division of the said county* for which I act, who was delivered of a bastard child before the eleventh day of August, one thousand eight hundred and seventy-two, to wit, on the            day of            in the year of our Lord one thousand eight hundred and            of which bastard child she alleges you to be the father, and for the maintenance whereof she hath given me proof that you did within the twelve calendar months next after its birth pay money, for a summons to be served upon you to appear at a petty sessions of the peace according to the form of the statute in such case made and provided.

These are therefore to require you to appear at the petty session of the justices, holden at            being the petty session for the *division* (a)            in which I usually act, on (b)            the            day of            at            of the clock in the            noon in the year of our Lord, one thousand eight hundred and            to answer any complaint which she shall then and there make against you touching the premises.

Herein fail you not.

Given under my hand at            in the *county* (a)            this            day of            in the year of our Lord one thousand eight hundred and            .

*Note.*—If you neglect to appear at the petty session as above stated, the justices, upon proof that this summons has been duly served upon you, or left at your last place of abode, may proceed, if they think fit, to make an order upon you, as the putative father of the child above referred to, to pay a weekly sum to the said mother for its maintenance, and other sums for costs and expenses.

(a) *Or city, borough, or other place.*

(b) *Insert some day, at least six days after the date of the summons, and after the day when the same can be served upon the man, or at his place of abode.*

## No. 13.

**Recognizance (without Surety) on Adjournment of Hearing.**

Be it remembered, that on            day the            day of            in  
the year of our Lord one thousand eight hundred and            ,  
of            personally came before the undersigned, *one* of her  
Majesty's justices of the peace for the *county (a)* of            and  
acknowledged himself to our Sovereign Lady the Queen the sum  
of            , of good and lawful money of Great Britain, to be made  
and levied of the goods and chattels, lands and tenements of the  
said            , to the use of our said Lady the Queen, her heirs and  
successors, if he the said            shall fail in the condition endorsed.

Taken and acknowledged, the day and  
year first above mentioned, at  
before me. }

**Recognizance (with Surety or Sureties) on Adjournment of Hearing.**

Be it remembered, that on            day the            day of             
in the year of our Lord one thousand eight hundred and             
of            and            of            and            of            personally  
came before the undersigned, *one* of her Majesty's justices of the  
peace for the *county (a)* of            and severally acknowledged them-  
selves to owe to our Sovereign Lady the Queen the several sums  
following; that is to say, the said            the sum of            , and the  
said            the sum of            , and the said            the sum of            ,  
of good and lawful money of Great Britain, to be made and levied  
of their several goods and chattels, lands and tenements respectively,  
to the use of our said Lady the Queen, her heirs and successors, if  
he the said            shall fail in the condition endorsed.

Taken and acknowledged, the day and  
year first above mentioned, at  
before me. }

(a) *Or city, borough, or other place.*

**Condition.**

The condition of the within written recognizance is such, that if the said                    shall personally appear on the                    day of                    at                    of the clock in the                    noon, at                    before such justices of the peace for the said *county (a)* as may then be there, to answer the complaint of [*here state the name of the mother, and the object of her application*] and to be further dealt with according to law, then the said recognizance to be void, or else to stand in full force and virtue.

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**Notice to Defendant (and his Surety or Sureties).**

Take notice, that you,                   , are bound in the sum of                    [*and you,                    in the sum of                   , and you,                    in the sum of                   ,*] that you,                   , appear personally on the                    day of                    at                    of the clock in the                    noon at                    before such justices of the peace for the *county (a)* of                    as shall then be there, to answer the complaint of [*here state as in the condition*] the hearing of which was adjourned to the said time and place, and unless you appear accordingly the recognizance entered into by you,                    and by                   , [*and                   , as your suret                   ,*] will forthwith be levied on you [*and him or them*].

Dated this                    day of                    18                   .

---

**Certificate of Non-appearance to be endorsed.**

I hereby certify, that the said                    hath not appeared at the time and place in the within written recognizance mentioned, but therein hath made default by reason whereof the said recognizance is forfeited.

Dated this                    day of                    18                   .

*One of the justices of the peace within referred to.*

*(a) Or city, borough, or other place.*

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## SCHEDULE B.

No. 14.

**Form of Order when Application was made by a Woman  
with Child, and the Child has been born and is alive.**

to wit. } At a petty session of her Majesty's justices of the  
the (a) division of peace for the county (a) of holden in and for  
the day of in the said county (a) at on  
hundred and in the year of our Lord one thousand eight  
before us her Majesty's justices of the  
peace for the said (a) county.

Whereas one single woman residing at within this  
(a) division, being with child, did on the day of in the  
year of our Lord one thousand eight hundred and make appli-  
cation to one of her Majesty's justices of the peace acting for  
this (a) division, for a summons to be served upon one of the  
parish of in the county (a) of whom she, *being duly sworn*  
before the said upon her oath stated (b) to be the father of the  
child with which she was then pregnant; and the said justice there-  
upon issued his summons to the said to appear at a petty  
session to be holden on this day for this division (a) in which the  
said justice usually acts, to answer her complaint touching the  
premises: And whereas the said hath been lately delivered  
of a bastard child: And whereas the said having been duly  
served with the said summons, *and appearing in pursuance thereof (c)*  
and the said having now applied to us, the justices in  
petty session assembled, for an order upon the said according  
to the form of the statute in such case made and provided; and it  
being now proved to us, *in the presence and hearing of the said (d)*  
that the said child was, on the day of in the year  
of our Lord one thousand eight hundred and born a bastard  
of the body of the said and we having, *in the presence and  
hearing of the said (d)* heard the evidence of such woman and  
such other evidence as she hath produced, *and having also heard all  
the evidence tendered by (e)* the said and the evidence of

the said            the mother of the said child, having been corroborated in some material particular by other evidence to our satisfaction, do hereby adjudge the said            to be the putative father of the said bastard child ; and, having regard to all the circumstances of this case, we do now hereby order, that the said            do pay unto the said            the mother of the said child, so long as she shall live and shall be of sound mind, and shall not be in any gaol or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of such child under the provisions of an Act passed in the eighth year of the reign of her present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," the sum of (f)            per week for the maintenance and education of the said child (g)            until the said child shall attain the age of (h)            years or shall die : And we do hereby further order the said            to pay to the said            the sum of            for the expenses incidental to the birth of the said child, and the sum of            for the costs incurred in obtaining this order.

Given under our hands and seals, at the session aforesaid.

(a) *Or city, borough, or other place.*

(b) *Or affirmed.*

(c) *Insert here if the defendant do not appear, "six days at least before this day, as is now proved before us," or "the same having been left at his last place of abode six days at least before this day, as is now proved before us," and erase the words in italics.*

(d) *Should the defendant not appear, erase the words in italics.*

(e) *Should the defendant appear by attorney or counsel, it will be then necessary to erase the word "by" and add "on behalf of ;" but should he not appear himself, or by attorney or counsel, then erase the words in italics.*

(f) *Not to exceed five shillings.*

(g) *If the justices allow the payment from the birth, insert the words "from the birth of the said child," and if they decline to do so, insert the word "henceforth."*

(h) *Insert "thirteen" or "sixteen," according as the justices may order.*

## No. 15.

**Form of Order when Application was made by a Woman with Child, and the Child has been born and is dead.**

to wit. } At a petty session of her Majesty's justices of the peace  
 (a) division of } for the county(a) of holden in and for the  
 in the said county(a) at on the day  
 of in the year of our Lord one thousand eight hundred and  
 before us her Majesty's justices of the peace for the  
 said (a) county.

Whereas one single woman residing at within this  
 (a) division, being with child, did on the day of in the  
 year of our Lord one thousand eight hundred and make appli-  
 cation to one of her Majesty's justices of the peace acting for  
 this (a) division, for a summons to be served upon one of the  
 parish of in the county(a) of whom she, *being duly sworn*  
 before the said upon her oath stated (b) to be the father of the child  
 with which she was then pregnant ; and the justice thereupon issued  
 his summons to the said to appear at a petty sessions to be holden  
 on this day for this division (a) in which the said justice usually  
 acts, to answer her complaint touching the premises : And whereas  
 the said hath been lately delivered of a bastard child : And  
 whereas the said having been duly served with the said sum-  
 mons, and appearing in pursuance thereof (c) ; and the said  
 having now applied to us, the justices in petty session  
 assembled, for an order upon the said according to the form  
 of the statute in such case made and provided ; and it being now  
 proved to us, in the presence and hearing of the said (d) that the  
 said child was, on the day of in the year of our Lord one  
 thousand eight hundred and born a bastard of the body of  
 the said and we having, in the presence and hearing of the  
 said (d) heard the evidence of such woman and such other  
 evidence as she hath produced, and having also heard all the evidence  
 tendered by (c) the said and the evidence of the said  
 the mother of the said child, having been corroborated in some  
 material particular by other evidence to our satisfaction, do hereby  
 adjudge the said to be the putative father of the bastard  
 child ; and it being now also proved to us, that the said child died  
 on the day of last past, we do hereby order that the said  
 do pay to the mother of the said deceased child the sum

of            for the expenses incidental to the birth of the said child, and also the sum of            for the funeral expenses of the said child, together with the sum of            for the costs incurred in obtaining this order (f).

Given under our hands and seals at the session aforesaid.

(a) *Or city, borough, or other place.*

(b) *Or affirmed.*

(c) *Insert here if the defendant do not appear, "six days at least before this day, as is now proved before us," or "the same having been left at his last place of abode six days at least before this day, as is now proved before us," and erase the words in italics.*

(d) *Should the defendant not appear, erase the words in italics.*

(e) *Should the defendant appear by attorney or counsel, it will then be only necessary to erase the word "by" and add "on behalf of"; but should he not appear himself, or by attorney or counsel, then erase the words in italics.*

(f) *If the justices decide upon allowing such payments, insert here "and the sum of            for the maintenance and education of the said child from its birth until its death, being at the rate of            per week" [not to exceed five shillings per week].*

---

No. 16.

**Form of Order when Application was made by a Woman after the Birth of the Child and the Child is alive.**

to wit. } At a petty session of her Majesty's justices of the  
the } peace for the county (a) of            holden in and for  
          (a) division of            in the said (a) county, at            on the  
          day of            in the year of our Lord, one thousand eight  
hundred and            before us            her Majesty's justices of the  
peace for the said (a) county.

Whereas one            single woman, residing at            within this  
(a) division            did on the            day of            in the year  
of our Lord one thousand eight hundred and            having been  
delivered of a bastard (child) (b)            twelve calendar months prior  
thereto, make application to            one of her Majesty's justices of  
the peace acting for this (a) division, for a summons to be served  
upon one            of            whom she alleges to be the father of the  
said child (c)            ; and the said justice thereupon issued his  
summons to the said            to appear at a petty sessions to be holden  
on this day for this (a) division            in which the said justice  
usually acts, to answer her complaint touching the premises :

And whereas the said            having been duly served with the  
said summons within forty days from this day (d)            (e) and now

appearing in pursuance thereof and the said having now applied to us the justices in petty sessions assembled for an order upon the said according to the form of the statute in such case made and provided; and it being now proved to us, *in the presence and hearing of the said (f)* that the said child was on the day of in the year of our Lord one thousand eight hundred and born a bastard of the body of the said; and we having, *in the presence and hearing of the said (f)* heard the evidence of such woman and such other evidence as she hath produced, *and having also heard all the evidence tendered by (g) the said* and the evidence of the said the mother of the said child, having been corroborated in some material particular by other evidence to our satisfaction, do hereby adjudge the said to be the putative father of the said bastard child; and, having regard to all the circumstances of this case, we do now hereby order, that the said do pay unto the said the mother of the said child, so long as she shall live and shall be of sound mind, and shall not be in any gaol or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of such child under the provisions of an Act passed in the eighth year of the reign of her present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," the sum of (h) per week for the maintenance and education of the said child (i) until the said child shall attain the age of (j) years, or shall die: And we do hereby further order the said to pay to the said the sum of for the expenses incidental to the birth of the said child, and the sum of for the costs incurred in obtaining this order.

Given under our hands and seals, at the session aforesaid.

(a) *Or city, borough, or other place.*

(b) *Insert "within," or "more than," as the case may require.*

(c) *Insert, as the case may require, "and who was proved before the said justice to have paid money for the maintenance of the said child within twelve calendar months after its birth," or "and who was proved before the said justice to have ceased within the twelve calendar months next after the birth of the said child to reside in England, and to have returned to England within the twelve calendar months next before the date of such application."*

(d) *If the order be made at an adjourned session, insert the day of the commencement of the session, adding these words, "from which day the hearing of this case hath been adjourned," and erase the words "this day."*

(e) *If the defendant do not appear, insert here, "and six days at least before this day, as is now proved before us," or "the same having been left at his last place of abode six days at least before this day, as is now proved before us," and erase the words which follow in italics.*

(f) *Should the defendant not appear, erase the words in italics.*

(g) *Should the defendant appear by attorney or counsel, it will be then only necessary to erase the word "by" and add "on behalf of"; but should he not appear himself, or by attorney or counsel, then erase the words in italics.*

(h) *Not to exceed five shillings.*

(i) *If the application was made within two calendar months after the birth, and the justices allow the payment from the birth, insert "from the birth of the said child"; in all other cases insert the word "henceforth."*

(j) *Insert "thirteen" or "sixteen," according as the justices may order.*

No. 17.

**Form of Order when Application was made by a Woman after the Birth of the Child and the Child is dead.**

to wit. } At a petty session of her Majesty's justices of the  
 the (a) division of peace for the county (a) of holden in and for  
 the day of in the year of our Lord one thousand eight  
 hundred and before us her Majesty's justices of the  
 peace for the said (a) county.

Whereas one single woman, residing at within this  
 (a) division did on the day of in the year of  
 our Lord one thousand eight hundred and having been  
 delivered of a bastard child (b) twelve calendar months prior  
 thereto, make application to one of her Majesty's justices of  
 the peace acting for this (a) division, for a summons to be served  
 upon one of whom she alleged to be the father of the  
 said child (c) ; and the said justice thereupon issued his sum-  
 mons to the said to appear at a petty session to be holden on  
 this day for this (a) division in which the said justice usually  
 acts, to answer her complaint touching the premises :

And whereas the said having been duly served with the  
 said summons within forty days from this day (d) (e) and now  
 appearing in pursuance thereof and the said having now  
 applied to us the justices in petty session assembled for an order  
 upon the said according to the form of the statute in such case

made and provided ; and it being now proved to us, *in the presence and hearing of the said (f)* that the said child was on the day of in the year of our Lord one thousand eight hundred and born a bastard of the body of the said ; and we having, *in the presence and hearing of the said (f)* heard the evidence of such woman and such other evidence as she hath produced, *and having also heard all the evidence tendered by (g)* the said and the evidence of the said the mother of the said child, having been corroborated in some material particular by other evidence to our satisfaction, do hereby adjudge the said to be the putative father of the said bastard child ; and it being now also proved to us, that the said child died on the day of last past, we do hereby order that the said do pay to the mother of the said deceased child, the sum of for the expenses incidental to the birth of the said child, and also the sum of for the funeral expenses of the said child, together with the sum of for the costs incurred in obtaining this order (h).

Given under our hands and seals, at the session aforesaid.

(a) *Or city, borough, or other place.*

(b) *Insert "within," or "more than," as the case may require.*

(c) *Insert, as the case may require, "and who was proved before the said justice to have paid money for the maintenance of the said child within twelve calendar months after its birth," or "and who was proved before the said justice to have ceased within the twelve calendar months next after the birth of the said child to reside in England, and to have returned to England within the twelve calendar months next before the date of such application."*

(d) *If the order be made at an adjourned session, insert the day of the commencement of the session, adding these words, "from which day the hearing of this case hath been adjourned," and erase the words "this day."*

(e) *If the defendant do not appear, insert here, "and six days at least before this day, as is now proved before us," or "the same having been left at his last place of abode six days at least before this day, as is now proved before us," and erase the words which follow in italics.*

(f) *Should the defendant not appear, erase the words in italics.*

(g) *Should the defendant appear by attorney or counsel, it will be then only necessary to erase the word "by" and add "on behalf of"; but should he not appear himself, or by attorney or counsel, then erase the words in italics.*

(h) *If the application was made within two calendar months after the birth, and the justices decide upon allowing such payments, insert here "and the sum of for the maintenance and education of the said child from its birth until its death, being at the rate of per week" [not to exceed five shillings per week].*

No. 18.

**Recognizance on Notice of Appeal.**

to wit. } WHEREAS by an order under the hands and seals  
of assembled at a petty session of her  
Majesty's justices of the peace for the (a) county of holden in  
and for the (a) division of in the said county, at on  
the day of in the year of our Lord one thousand eight  
hundred and the said was adjudged to be the putative  
father of a bastard child, of which one had been delivered, and  
was ordered to pay to her certain sums of money therein set forth :  
And whereas the said hath given to the said notice of  
his intention to appeal against the said order to the general quarter  
session of the peace to be holden (b) on the day of  
next, for the county (a) of .

Now the condition of this recognizance is such, that if the above-  
named do appear at the general quarter session of the peace  
to be held at in and for the (a) county of on the  
day in the year of our Lord one thousand eight hundred  
and and then and there to try such appeal, and pay such  
costs as shall be by the said court awarded, then this recognizance to  
be void.

Taken and acknowledged, this day of in the  
year of our Lord one thousand eight hundred and  
at in the county of (a) before me, the under-  
signed, one of her Majesty's justices of the peace for the  
said county (a).

*Note.*—Notice in writing of this recognizance having been entered  
into must be given or sent by post to the woman in whose favour  
the order was made, and also to one at least of the justices who made  
the order, unless this recognizance be entered into before one of such  
justices.

(a) *Or city, borough, or other place.*

(b) *If the notice of appeal do not set out the day on which the quarter  
session is to be holden, this recital and the condition must be altered  
accordingly.*

## SCHEDULE C.

## No. 19.

**Information of Mother on Disobedience to Order.**

} THE information and complaint of                      of the parish  
 to wit.                      } of                      in the *county* (a) of                      single woman taken  
 upon *oath* (b) before me                      one of her Majesty's justices of the  
 peace for the said *county* (a) the (c)                      day of                      in the year of  
 our Lord one thousand eight hundred and                      who saith, that by  
 an order made under the authority of the statutes in that behalf, at  
 the petty session holden in and for the *division* of (a)                      in the  
*county* of (a)                      on the                      day of                      in the year of our Lord  
 one thousand eight hundred and                      by her Majesty's justices of  
 the peace in and for said *county* (a)                      acting for the said  
*division* (a)                      then and there assembled                      of                      in the  
*county* (a) of                      was adjudged to be the putative father of a  
 bastard child, then lately born of her body, and that in and by the  
 said order it was ordered that the said                      should pay to her the  
 said (d)

And this deponent further saith, that the said                      hath had due  
 notice of the said order, and that the payments directed to be made  
 by the said order have not been made according thereto by the  
 said                      and that there is now in arrear for the same the sum  
 of                      being the amount of                      .

And this informant therefore prays justice in the premises,

Exhibited and sworn before me, }  
                     the day and year first above }  
                     written, at                      in the }  
                     *county* (a)                      .

(a) *Or city, borough, or other place.*

(b) *Or affirmation.*

(c) *This must not be before the expiration of one calendar month from the order.*

(d) *Here recite the terms of the order.*

No. 20.

**Warrant of Apprehension for Disobedience of Order.**

to wit. } To (a).....

Whereas information and complaint have been made upon oath (b) before me, one of her Majesty's justices of the peace for the county (c) of the day of in the year of our Lord one thousand eight hundred and by of the parish of in the county (c) of single woman, that by an order made under the authority of the statutes in that behalf, the division (c) of in the county (c) of on the day of in the year of our Lord one thousand eight hundred and by her Majesty's justices of the peace in and for the said county (c) acting in and for the said division (c) then and there assembled of in the county (c) of was adjudged to be the putative father of a bastard child, then lately born of her body, and that in and by the said order it was ordered that the said should pay to her the said (d) and that the said had had due notice of the said order, and that the payments directed to be made by the said order have not been made according thereto by the said and that there is now in arrear for the same the sum of being the amount of .

These are, therefore, in her Majesty's name, to command you, or some or one of you, forthwith to apprehend the said and convey him before two of her Majesty's justices of the peace in and for the said county (c) to answer the premises, and be dealt with according to law.

Given under my hand and seal, at in the county (c) of this day of in the year of our Lord one thousand eight hundred and .

(a) *This should be addressed to the constables of the metropolitan police force, or of the county, borough, or parish, according to circumstances.*

(b) *Or affirmation.*

(c) *Or city, borough, or other place.*

(d) *Here recite the terms of the order.*

No. 21.

**Warrant of Distress against the Putative Father.**

to wit. } To (a)

Whereas information and complaint were, on the            day of            in the year of our Lord one thousand eight hundred and            made upon *oath* (b) before            one of her Majesty's justices of the peace in and for the said *county* (c) by            of the parish of            in the *county* (c) of            single woman, that by an order made at the petty session holden in and for the            *division* (c) of            in the *county* of (c)            on the            day of            in the year of our Lord one thousand eight hundred and            by her Majesty's justices of the peace in and for the said *county* (c) acting in and for the said *division* (c) then and there assembled            of            in the *county* (c) of            was adjudged to be the putative father of a bastard child, then lately born of her body, and that in and by the said order it was ordered that the said            should pay to her the said (d)            and that the said            had had due notice of the said order, and that the payments directed to be made by the said order had not been made according thereto by the said            and that there was then in arrear for the same the sum of            being the amount of            .

And whereas the said justice, by warrant under his hand and seal directed to            commanded them, or some or one of them, forthwith to apprehend the said            and to convey him before two of her Majesty's justices of the peace for the said *county* (c) to answer the premises, and be dealt with according to law.

Whereupon the said            being now brought before us, two of her Majesty's justices of the peace for the said *county* (c) to show cause why the same should not be paid, hath not shown any cause why the same should not be paid ; and the same duly appearing to us upon *oath* (b) to be due from the said            under the said order, together with the further sum of            for the costs attending such warrant, apprehension, and bringing up of him, the said            nevertheless hath not paid the said sums due under the said order,

and the said sums so due for such costs, but therein hath made default.

These are therefore to require you forthwith to make distress of the goods and chattels of the said                      and if within the space of                      days next after such distress by you taken the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels, so by you distrained, and out of the money arising by such sale thereof that you detain the said sums, and also the reasonable charges of taking, keeping, and selling the said distress, rendering the overplus (if any), on demand, unto the said                      and if no sufficient distress can be found, that then you certify the same unto us or unto (e)                      two of her Majesty's justices of the peace acting for the said county (c) to the end that such further proceedings may be had therein as to law doth appertain; and we further order you to make return to this warrant, on the                      day of                      next, unto us or such justices as aforesaid.

And whereas (f) the said                      not having given sufficient security, by way of recognizance or otherwise, to our satisfaction, for his appearance on the return of this warrant, we do hereby further order you to detain the said                      and keep him in safe custody until the said return can be conveniently made, and then bring him before us or such justices as aforesaid.

Given under our hands and seals, at                      in the county (c).  
of                      this                      day of                      in the year of our Lord  
one thousand eight hundred and                      .

(a) This should be addressed to the constables of the metropolitan police force, or of the county, borough, or parish, according to circumstances.

(b) Or affirmation.

(c) Or city, borough, or other place.

(d) Here recite the terms of the order.

(e) If the party give security for his appearance, insert the names of the justices before whom he is to appear; but should he not find such security, insert the word "any."

(f) Should the party find security for his appearance on the return of the warrant erase this paragraph.

**Form of Recognizance for Appearance at the Return of  
the Distress Warrant.**

to wit. } WHEREAS the above-bounden having been  
apprehended upon a warrant issued under the hand  
and seal of one of her Majesty's justices of the peace in and  
for the county (a) of upon the information and complaint of  
for disobedience to an order made in the petty session  
holden in and for the division (a) of in the county of on  
the day of in the year of our Lord one thousand eight  
hundred and by her Majesty's justices of the peace then and  
there assembled, whereby he was adjudged to be the putative father  
of a bastard child, lately born of the body of the said single  
woman, and ordered to pay certain sums of money as therein set  
forth; and the said having been brought before  
and two of her Majesty's justices of the peace for the said  
county (a), by virtue of the said warrant, and not having paid the  
sums due from him under such order, together with the costs  
attending such warrant, apprehension, and bringing of him up  
before such justices, but having therein made default, they have by  
warrant under their hands and seals, addressed to directed  
the sum so due, together with such costs, to be recovered by distress  
and sale of the goods and chattels of the said and have made  
the said warrant returnable on the day of to them, or  
unto two justices of the peace acting for the said county (a).

Now the condition of this recognizance is such, that if the above-bounden do appear before the justices unto whom the said warrant is made returnable on the day so appointed for the return thereof, to abide the further proceedings thereon, then the same shall be of no effect, otherwise to remain in full force.

Taken and acknowledged the                      day of                      in the year  
of our Lord one thousand eight hundred and                       
at                      in the county (a) of                      before me the under-  
signed, one of her Majesty's justices of the peace in and for  
the said county (a) of                     

(a) *Or city, borough, or other place.*

## No. 23.

**Warrant of Commitment.**

to wit. } To (a) and to the keeper of the *common gaol* (b)  
 } at in the *county* (d) of .

Whereas information and complaint were, on the day of in the year of our Lord one thousand eight hundred and made upon *oath* (c) before one of her Majesty's justices of the peace for the said *county* (d), by of the parish of in the *county* (d) of single woman, that by an order made at the petty session holden in and for the *division* (d) of in the *county* (d) of on the day of in the year of our Lord one thousand eight hundred and by her Majesty's justices of the said *county* (d) acting in and for the said *division* (d) then and there assembled of in the *county* (d) of was adjudged to be the putative father of a bastard child then lately born of her body ; and that in and by the said order it was ordered that the said should pay to her the said (e) and that the said had had due notice of the said order, by the said and that there was then in arrear for the same the sum of being the amount of .

And whereas the said justice, by warrant under his hand and seal, directed to the commanded them, or some or one of them, forthwith to apprehend the said and to convey him before two of her Majesty's justices of the peace in and for the said *county* (d) to answer the premises, and be dealt with according to law.

Whereupon the said being now brought before us, two of her Majesty's justices of the peace for the said *county* (d) to show cause why the same should not be paid, hath not shown any cause why the same should not be paid ; and the same duly appearing to us upon *oath* (c) to be due from the said under the said order, together with the further sum of for the costs attending such warrant, apprehension, and bringing up of him, the said nevertheless hath not paid the said sums due under the said order, and the said sums so due for such costs, but therein hath made default ;

And whereas it appears to us, upon the admission of the said that no sufficient distress can be had upon his goods and chattels for the recovery of the said several sums :

These, are, therefore, to command you to convey the said        to the said *common gaol* (b) at        and these are also to command you the said keeper of the said *common gaol* (b) to receive the said        into the said *common gaol* (b) there to remain without bail or mainprize for the term of (f)        unless such sum and costs, together with the costs and charges attending the commitment and conveying of the said        to the said *common gaol* (b), and of the persons employed to convey him thither, amounting to the further sum of        be sooner paid and satisfied.

Given under our hands and seals, at        in the county of        this        day of        in the year of our Lord one thousand eight hundred and        .

(a) *This should be addressed to the constables of the metropolitan police force, or of the county, borough, or parish, according to circumstances.*

(b) *Or house of correction.*

(c) *Or affirmation.*

(d) *Or city, borough, or other place.*

(e) *Here recite the terms of the order.*

(f) *Not to exceed three calendar months.*

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No. 24.

### Appointment of Guardian to the Bastard Child.

to wit.        } WHEREAS the justices assembled at a petty session of her Majesty's justices of the peace for the county (a) of        holden in and for the division of (a)        in the county of        at        on the        day of        in the year of our Lord one thousand eight hundred and        by an order under their hands and seals, reciting that (b)        .

And whereas the said        hath lately (c)        and the said child is still alive, and under the age of        :

Now we        two of her Majesty's justices of the peace acting in and for the county (a) of        do hereby order and appoint of        in the county of (a)        not being an officer of any parish or union, and having consented thereto, to have the custody

of such bastard child, so long as such bastard child shall not be chargeable to any parish or union.

Given under our hands and seals, at            in the county  
of (a)            this            day of            in the year of our Lord  
one thousand eight hundred and            .

N.B.—A duplicate of this appointment is to be sent through the post or otherwise, by the clerk of the justices, to the clerk of the guardians of the union or parish wherein the mother of the said child resided at the time when she died, or ceased to be entitled to receive the payments under the order.

(a) *Or city, borough, or other place.*

(b) This form must be completed in regard to the recitals by reference to the order of the justices.

(c) Died, *or* become of unsound mind, *or* is now in the gaol *or* prison of            , in the county of            , *or* is under sentence of transportation.

Given under our seal of office, this fourth day of August, in the year one thousand eight hundred and seventy-three.

(L.S.)

JAMES STANSFELD,  
*President.*

JOHN LAMBERT,  
*Secretary.*

## ADDITIONAL FORMS

PREScribed BY THE LOCAL GOVERNMENT BOARD FOR PROCEEDINGS  
UNDER THE BASTARDY ACTS, DATED 8TH JANUARY, 1874.

To the Justices of the Peace in England and Wales ;—

To the Guardians of the Poor of all the Unions in England  
and Wales ;—

To the Guardians of the Poor of the several Parishes,  
Townships, and places in England and Wales  
under separate Boards of Guardians ;—

And to all others whom it may concern.

Whereas it is enacted by the Bastardy Laws Amendment Act, 1873, that the Local Government Board may issue such new or altered forms of proceedings in matters of bastardy as they shall deem necessary or expedient for giving effect to the provisions of that Act and of the Bastardy Laws Amendment Act, 1872 ;

And whereas the Local Government Board, in pursuance of the authority so conferred upon them, did, on the fourth day of August last, issue certain forms set forth in the schedules thereto annexed ;

And whereas it is expedient that additional forms should be issued by the said Local Government Board, as hereinafter mentioned :

Now, therefore, we, the Local Government Board, in pursuance of the authority aforesaid, do hereby issue the additional forms set forth in the schedule hereto annexed.

## SCHEDULE.

## No. 1.

**Application by the Guardians of a Union or Parish to which a  
Bastard Child has become Chargeable.**

to wit. } APPLICATION of the guardians of the poor of the  
undersigned } *union (a) in the county (b) of* made before us, the  
two of her Majesty's justices of the peace acting  
for the *petty sessional division (b) of* in the *county (b) of*  
and having jurisdiction in the said *union (a) in petty sessions*

assembled, this            day of            in the year of our Lord one thousand eight hundred and            ;

Who say that, on the            day of            in the year of our Lord one thousand eight hundred and            a certain bastard child of            , single woman, became chargeable to the said *union* (a), and allege that one            of            in the *county* (b) of            is the father of such child, and make application to us for a summons to be served upon the said            to appear before two justices of the peace having jurisdiction in the said *union* (a), to show cause why an order should not be made upon him to contribute towards the relief of such bastard child.

Exhibited before us, the day and            }  
year first above written.            }

- (a) *Or of the parish of*  
(b) *Or city, borough, or other place.*

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No. 2.

**Summons on Application by the Guardians of a Union or Parish to which a Bastard Child has become Chargeable.**

to wit.            } To            of            in the parish of            in the  
                              }            *county* (a) of            .

Whereas application hath been made to us, the undersigned two of her Majesty's justices of the peace acting for the *petty sessional division* (a) of            in the *county* (a) of            and having jurisdiction in the            *union* (b), in petty sessions assembled, by the guardians of the said *union* (b) for a summons to be served on you to appear before two justices of the peace having jurisdiction in the said *union* (b), to show cause why an order should not be made upon you to contribute towards the relief of a certain bastard child of            , single woman, which child has become chargeable to the said *union* (b), and of which child it is alleged that you are the father :

These are, therefore, to require you to appear at the petty session of her Majesty's justices of the peace for the *county* (a) of            to be holden in and for the            *division* (a) of            in the said

*county (a)* at            on the            day of            at            of the clock in  
the            noon, in the year of our Lord one thousand eight hundred  
and            , to show cause why an order should not be made upon  
you to contribute towards the relief of the said bastard child.

Herein fail you not.

Given under our hands and seals this            day of            in  
the year of our Lord one thousand eight hundred and  
at            in the *county (a)* aforesaid.

(L.S.)

(L.S.)

(a) *Or city, borough, or other place.*

(b) *Or the parish of*

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No. 3.

### Recognizance on Adjournment of Hearing.

Recognizance in the common form, with the following condition ;

#### *Condition.*

THE condition of the within written recognizance is such that if  
the said            shall personally appear on the            day of            at  
                                 of the clock in the            noon, at            before such justices  
of the peace for the *county (a)* of            as may then be there, to  
show cause why an order should not be made upon him to contri-  
bute towards the relief of a certain bastard child of            , single  
woman, which child has become chargeable to the            union (b),  
and of which child it is alleged that the said            is the father, then  
the said recognizance to be void, or else to stand in full force and  
virtue.

(a) *Or city, borough, or other place.*

(b) *Or the parish of*

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## No. 4.

**Notice of such Recognizance to be given to the Defendant  
(and his Surety or Sureties).**

TAKE notice, that you, , are bound in the sum of ,  
 [and you, , in the sum of , and you, , in the sum  
 of ,] that (c) appear personally on the day of  
 at of the clock in the noon at before such  
 justices of the peace for the county (a) of as shall then be  
 there, to show cause why an order should not be made upon (c)  
 to contribute towards the relief of a certain bastard child  
 of , single woman, which child has become chargeable to the  
 union (b), and of which child it is alleged that (c) are  
 the father, as to which matter the hearing of the application of the  
 guardians of the said union (b) was adjourned to the said time and  
 place, and unless (d) appear accordingly the recognizance  
 entered into by you, , [and by and , as your  
 suret ,] will forthwith be levied on you [and him].

Dated this day of 18 .

(a) Or city, borough, or other place.

(b) Or the parish of .

(c) Insert you or the name of the alleged father, as the case may  
 require.

(d) Insert you or he.

## No. 5.

**Recognizance on Notice of Appeal.**

Recognizance in the common form, with the following condition :

to wit. } WHEREAS by an order under the hands and seals  
 of two of her Majesty's justices of the peace  
 in and for the county (a) of having jurisdiction in the  
 union (b), assembled at a petty session holden in and for the  
 division (a) of in the said county (a), at on the  
 day of in the year of our Lord one thousand eight  
 hundred and the said was adjudged to be the putative  
 father of a certain bastard child, of which one , single woman,  
 had been delivered, and which had become chargeable to the said

*union (b)*, and was ordered to pay to the guardians of the said *union (b)* or to one of their officers certain sums of money therein set forth as contributions towards the relief of the said child : And whereas the said        hath given to the said guardians notice of his intention to appeal against the said order to the general quarter session of the peace to be holden on        the        day of next, for the *county (a)* of        :

Now the condition of this recognizance is such, that if the above named        do appear at the general quarter session of the peace to be holden at        in and for the *county (a)* of        on the day of        in the year of our Lord one thousand eight hundred and        and then and there try such appeal, and pay such costs as shall be by the said court awarded, then this recognizance to be void.

Taken and acknowledged, this        day of        in the year of our Lord one thousand eight hundred and        at        in the *county (a)* of        before me the undersigned, one of her Majesty's justices of the peace in and for the said *county (a)*.

- (a) *Or city, borough, or other place.*  
(b) *Or the parish of*

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No. 6.

**Order for Contribution towards the Relief of a Bastard Child which has become Chargeable to a Union or Parish.**

to wit.        } At a petty session of her Majesty's justices of the  
                              } peace for the *county (a)* of        holden in and for  
the        *division (a)* of        in the said *county (a)* at        on  
the        day of        in the year of our Lord one thousand eight  
hundred and        before us        her Majesty's justices of the  
peace for the said *county (a)*, having jurisdiction in the  
*union (b)*, in the *county (a)* of        .

Whereas the guardians of the said *union (b)*, did on the day of        in the year of our Lord one thousand eight hundred

and , make application to , two of her Majesty's justices of the peace, acting for the *petty sessional division (a)* of in the *county (a)* of and having jurisdiction in the said *union (b)*, for a summons to be served upon one of the parish of in the *county (a)* of to appear before two justices of the peace having jurisdiction in the said *union (b)*, to show cause why an order should not be made upon the said to contribute towards the relief of a certain bastard child of single woman, which child did on or about the day of in the year of our Lord one thousand eight hundred and become chargeable to the said *union (b)*, and of which child it is alleged that the said is the father, and whereas the said last-mentioned justices thereupon issued their summons to the said to appear at a petty session to be holden on this day for this *division (a)*, to show cause why such order should not be made upon him :

And whereas the said having been duly served with the said summons and appearing in pursuance thereof (c), and the said guardians having now applied to us, the justices in petty sessions assembled, for an order upon the said under the Bastardy Laws Amendment Act, 1873, and it being now proved to us, in the presence and hearing of the said (d) that the said child was, on the day of in the year of our Lord one thousand eight hundred and , born a bastard of the body of the said , and that the said child did on or about the day of in the year of our Lord one thousand eight hundred and become and is now chargeable to the said *union (a)*, and we having, in the presence and hearing of the said (d) heard the evidence of such woman and such other evidence as has been produced, in support of the application, and having also heard all the evidence tendered by (e) the said and the evidence of the said the mother of the said child, having been corroborated in some material particular by other evidence to our satisfaction, do hereby adjudge the said to be the putative father of the said bastard child ; and do also hereby order that the said do pay to the said guardians, or to one of their officers, the sum of (f) towards the relief of the said child during such time as the said child shall continue or hereafter become chargeable to the said *union (b)*, until the mother shall obtain an order or until

such child shall attain the age of        years (g), together with the sum of        for the costs incurred in obtaining this order.

Given under our hands and seals, at the session aforesaid.

(L.S.)

(L.S.)

(a) *Or city, borough, or other place.*

(b) *Or the parish of*

(c) *Insert here if the defendant do not appear, "six days at least before this day, as is now proved before us," or "the same having been left at his last place of abode six days at least before this day, as is now proved before us," and erase the words in italics.*

(d) *Should the defendant not appear erase the words in italics.*

(e) *Should the defendant appear by attorney or counsel, it will then be only necessary to erase the word "by" and add "on behalf of"; but should he not appear himself or by attorney or counsel then erase the words in italics.*

(f) *Insert "weekly" or otherwise as the justices may determine.*

(g) *Insert "thirteen" or "sixteen," according as the justices may order.*

#### No. 7.

#### Information of an Officer of a Union or Parish on Disobedience to the Order made upon the Putative Father.

to wit. } THE information and complaint of        of        in  
           } the county (a) of       , being an officer of the  
 union (b), taken upon oath (c) before me        one of her Majesty's  
 justices of the peace in and for the county (a) of        the (d)  
 day of        in the year of our Lord one thousand eight hundred  
 and        who saith, that by an order made under the authority of  
 the Bastardy Laws Amendment Act, 1873, at a petty session holden  
 in and for the division (a) of        in the county (a) of        on  
 the        day of        in the year of our Lord one thousand eight  
 hundred and        by two of her Majesty's justices of the peace  
 acting for the said division (a) and having jurisdiction in the said  
 union (b), then and there assembled, one        of        in the parish  
 of        in the county (a) of        was adjudged to be the putative  
 father of a bastard child, born of the body of       , single woman,  
 which child had become chargeable to the said union (b), and that  
 in and by the said order it was ordered that the said        should

pay to the guardians of the said *union* (b), or to one of their officers, the sum of (e) towards the relief of the said child during such time as the said child should continue or thereafter become chargeable to the said *union* (b), until such child should attain the age of (f) years, together with the sum of for the costs incurred in obtaining the said order :

And this deponent further saith, that the said hath had due notice of the said order, and that the payments directed to be made by the said order have not been made according thereto by the said and that there is now in arrear for the same the sum of , being the amount of arrears of payments for weeks :

And this informant therefore prays justice in the premises.

Exhibited and sworn before me, }  
the day and year first above }  
written, at in the }  
county (a) of . }

(a) Or city, borough, or other place.

(b) Or the parish of .

(c) Or affirmation.

(d) This must not be before the expiration of one calendar month from the order.

(e) Insert "weekly," or otherwise according to the terms of the order.

(f) Insert "thirteen" or "sixteen," according as the justices may have ordered.

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No. 8.

**Warrant of Apprehension for Disobedience to Order for Contributions by the putative Father towards the Relief of a Bastard Child chargeable to a Union or Parish.**

to wit. } To (a) .

WHEREAS information and complaint have been made upon oath (b) before me, one of her Majesty's justices of the peace in and for the county (c) of the day of in the year of our Lord one thousand eight hundred and , by of in the county (c) of an officer of the *union* (d), that by an order made under the authority of the statute in that behalf at the petty session holden in and for the *division* (c) of in the

county (c) of                      on the                      day of                      in the year of our Lord one thousand eight hundred and                      by her Majesty's justices of the peace in and for the said county (c) acting in and for the said division (c), and having jurisdiction in the said union (d), then and there assembled, one                      of                      in the parish of                      in the county (c) of                      was adjudged to be the putative father of a certain bastard child, born of the body of                      , single woman, which child had become chargeable to the said union (d), and that in and by the said order it was ordered that the said                      should pay to the guardians of the said union (d), or to one of their officers, the sum of                      (e) towards the relief of the said child during such time as the said child should continue or thereafter become chargeable to the said union (d), until such child should attain the age of                      years (f), together with the sum of                      for the costs incurred in obtaining the said order :

And that the said                      had had due notice of the said order, and that the payments directed to be made by the said order have not been made according thereto by the said                      and that there is now in arrear for the same the sum of                      , being the amount of arrear of payments for                      weeks :

These are, therefore, in her Majesty's name, to command you, or some or one of you, forthwith to apprehend the said                      and convey him before two of her Majesty's justices of the peace in and for the said county (c) to answer the premises, and to be dealt with according to law :

Given under my hand and seal, at                      in the county (c) of                      this                      day of                      in the year of our Lord one thousand eight hundred and                      .

(L.S.)

(a) This should be addressed to the constables of the metropolitan police force, or of the county, borough, or parish, according to circumstances.

(b) Or affirmation.

(c) Or city, borough, or other place.

(d) Or the parish of                      .

(e) Insert "weekly," or otherwise according to the terms of the order.

(f) Insert "thirteen" or "sixteen," according as the justices may have ordered.

## No. 9.

**Warrant of Distress against the putative Father of a Bastard Child chargeable to a Union or Parish.**

to wit. } To (a)

WHEREAS information and complaint were, on the      day of      in the year of our Lord one thousand eight hundred and      made upon *oath* (b) before      one of her Majesty's justices of the peace in and for the *county* (c) of      by      of      in the *county* (c) of      , an officer of the *union* (d), that by an order made at the petty session holden in and for the      *division* (c) of      in the *county* (c) of      on the      day of      in the year of our Lord one thousand eight hundred and      by two of her Majesty's justices of the peace in and for the said *county* (c), acting in and for the said *division* (c), and having jurisdiction in the said *union* (d), then and there assembled, one      of      in the parish of      in the *county* (c) of      was adjudged to be the putative father of a certain bastard child born of the body of      , single woman, which child had become chargeable to the said *union* (d), and that in and by the said order it was ordered that the said      should pay to the guardians of the said *union* (d), or to one of their officers the sum of      (e) towards the relief of the said child during such time as the said child should continue or thereafter become chargeable to the said *union* (d), until such child shall attain the age of      (f) years, together with the sum of      for the costs incurred in obtaining the said order :

And that the said      had had due notice of the said order, and that the payments directed to be made by the said order had not been made according thereto by the said      , and that there was then in arrear for the same the sum of      , being the amount of arrears for      *weeks* payments :

And whereas the said justice, by warrant under his hand and seal directed to      commanded them, or some or one of them, forthwith to apprehend the said      and to convey him before two of her Majesty's justices of the peace for the said *county* (c), to answer the premises, and to be dealt with according to law :

Whereupon the said      being now brought before us, two of

her Majesty's justices of the peace for the said county (c), to show cause why the same should not be paid, hath not shown any cause why the same should not be paid ; and the same duly appearing to us upon oath to be due from the said        under the said order, together with the further sum of        for the costs attending such warrant, apprehension, and bringing up of him, the said        nevertheless neglects (g) to make payment of the said sums due under the said order, and the said sums so due for such costs.

These are therefore to require you forthwith to make distress of the goods and chattels of the said       , and if within the space of        days next after such distress by you taken the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then they do sell the said goods and chattels so by you distrained, and out of the money arising by such sale thereof that you detain the said sums, and also the reasonable charges of taking, keeping, and selling the said distress, rendering the overplus (if any), on demand, unto the said        and if no sufficient distress can be found, that then you certify the same unto us or unto (h)        two of her Majesty's justices of the peace acting for the county (c) of       , to the end that such further proceedings may be had therein as to law doth appertain ; And we further order you to make return to this warrant, on the day of        next, unto us or such justices as aforesaid.

And whereas (i) the said        hath not given sufficient security, by way of recognizance or otherwise, to our satisfaction, for his appearance on the return of this warrant, we do hereby further order you to detain the said        and keep him in safe custody until the said return can be conveniently made, and then bring him before us or such justices as aforesaid.

Given under our hands and seals, at        in the county (c)  
of        this        day of        in the year of our Lord  
one thousand eight hundred and        .

(L.S.)

(L.S.)

(a) *This should be addressed to the constables of the metropolitan police force, or of the county, borough, or parish, according to circumstances.*

(b) *Or affirmation.*

(c) *Or city, borough, or other place.*

(d) *Or the parish of        .*

(i) Should the party find security for his appearance on the return of the warrant erase this paragraph.

to wit. } WHEREAS the above-bounded having been apprehended upon a warrant issued under the hand and seal of one of her Majesty's justices of the peace in and for the county (a) of upon the information and complaint of an officer of the union (b), for disobedience to an order made at the petty session holden in and for the division (a) of in the county (a) of on the day of in the year of our Lord one thousand eight hundred and by two of her Majesty's justices of the peace having jurisdiction in the said union, then and there assembled, whereby he was adjudged to be the putative father of a bastard child, born of the body of a single woman, which child had become chargeable to the said union (b), and whereby he was ordered to pay certain sums of money as therein set forth; and having been brought before two of her Majesty's justices of the peace for the county (a) of by virtue of the said warrant, and having neglected (c) to make payment of the sums due from him under such order, together with the costs attending such warrant, apprehension, and bringing up of him before such justices, they have by warrant under their hands and seals, addressed to directed the sum so due, together with such costs, to be recovered by distress and sale of the goods and chattels.

of the said                      and have made the said warrant returnable on the  
    day of                      to them, or unto                      two justices of the peace  
 acting for the *county (a)* of                      .

Now the condition of this recognizance is such, that if the above  
 bounden                      do appear before the justices unto whom the said  
 warrant is made returnable on the day so appointed for the return  
 thereof, to abide the further proceedings thereon, then the same  
 shall be of no effect, otherwise to remain in full force.

Taken and acknowledged the                      day of                      in the  
    year of our Lord one thousand eight hundred and                       
    at                      in the *county (a)* of                      before me                      the  
    undersigned, one of her Majesty's justices of the peace in  
    and for the said *county (a)* of                      .

(a) *Or city, borough, or other place.*

(b) *Or the parish of                      .*

(c) *Or refused.*

---

No. 11.

**Warrant of Commitment.**

to wit.                      } To (a)                      and to the keeper of the *common gaol (b)*  
    } at                      in the *county (c)* of                      .

WHEREAS information and complaint were, on the                      day  
 of                      in the year of our Lord one thousand eight hundred  
 and                      made upon *oath (d)* before                      one of her Majesty's  
 justices of the peace for the *county (c)* of                      by                      of  
 in the *county (c)* of                      , an officer of the                      *union (e)*, that  
 by an order made under the Bastardy Laws Amendment Act,  
 1873, at the petty session holden in and for the *division (c)* of  
 in the *county (c)* of                      on the                      day of                      in the year of  
 our Lord one thousand eight hundred and                      by two of her  
 Majesty's justices of the peace for the said *county (c)* acting in and  
 for the said *division (c)* and having jurisdiction in the said *union (e)*  
 then and there assembled, one                      of                      in the parish of  
 in the *county (c)* of                      was adjudged to be the putative father of

a bastard child born of the body of , single woman, which child had become chargeable to the said *union* (e); and that in and by the said order it was ordered that the said should pay to the guardians of the said *union* (e) or to one of their officers, the sum of (f) towards the relief of the said child during such time as the said child should continue or afterwards be chargeable to the said *union* (e), until such child should attain the age of years (g) together with the sum of for the costs incurred in obtaining the said order :

And that the said had had due notice of the said order, and that the payments directed to be made by the said order had not been made according thereto by the said and that there was then in arrear for the same the sum of being the amount of arrears of payments for weeks.

And whereas the said justice, by warrant under his hand and seal, directed to commanded them, or some or one of them, forthwith to apprehend the said and to convey him before two of her Majesty's justices of the peace in and for the said *county* (c) to answer the premises, and be dealt with according to law.

Whereupon the said being now brought before us, two of her Majesty's justices of the peace for the said *county* (c) to show cause why the same should not be paid, hath not shown any cause why the same should not be paid; and the same duly appearing upon *oath* (d) to be due from the said under the said order, together with the further sum of for the costs attending such warrant, apprehension, and bringing up of him, the said nevertheless neglects (h) to make payment of the said sums due under the said order, and the said sums so due for such costs :

And whereas it appears to us, upon the admission of the said that no sufficient distress can be had upon his goods and chattels for the recovery of the several sums :

These are therefore to command you the said to convey the said to the said *common gaol* (b) at and these are also to command you the said keeper of the said *common gaol* (b), to receive the said into the said *common gaol* (b), there to remain without bail or mainprize for the term of (i) unless such sum and costs, together with the costs and charges attending the commitment and conveying of the said to the said *common gaol* (b), and of the

persons employed to convey him thither, amounting to the further sum of \_\_\_\_\_, be sooner paid and satisfied.

Given under our hands and seals, at \_\_\_\_\_ in the county (c) of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

(L.S.)

(L.S.)

(a) *This should be addressed to the constables of the metropolitan police force, or of the county, borough, or parish according to circumstances.*

(b) *Or house of correction.*

(c) *Or city, borough, or other place.*

(d) *Or affirmation.*

(e) *Or the parish of \_\_\_\_\_*

(f) *Insert "weekly," or otherwise according to the terms of the order.*

(g) *Insert "thirteen" or "sixteen," according as the justices may have ordered.*

(h) *Or refuses:*

(i) *Not to exceed three calendar months.*

Given under our seal of office, this eighth day of January, in the year one thousand eight hundred and seventy-four.

(L.S.)

JAMES STANSFELD,

*President.*

H. FLEMING,

*Secretary.*

N.B.—These forms, properly revised and arranged for use, may be purchased at 3s. per quire, 48 forms, from the Publishers of this Work.

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Ex. A. G. P.  
10/3/05.

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